

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PERSONAL AUDIO, LLC

DOCKET NO. 2:13CV270

VS.

FEBRUARY 24, 2014

9:03 A.M.

CBS CORPORATION

MARSHALL, TEXAS

PERSONAL AUDIO, LLC

DOCKET NO. 2:13CV271

VS.

FEBRUARY 24, 2014

9:03 A.M.

NBCUNIVERSAL MEDIA, LLC

MARSHALL, TEXAS

VOLUME 1 OF 1, PAGES 1 THROUGH 231

REPORTER'S TRANSCRIPT OF EVIDENTIARY HEARING

BEFORE THE HONORABLE ROY PAYNE
UNITED STATES MAGISTRATE JUDGE

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1 (OPEN COURT, ALL PARTIES PRESENT.)

2 THE COURT: For the record, we're here for the
3 motion hearing in *Personal Audio versus CBS* which is Case
4 No. 2:13-270 on our docket.

5 Would counsel state their appearances for the
6 record.

7 MR. WARD: Good morning, your Honor. Johnny
8 Ward, along with Jeremy Pitcock and Papool Chaudhari for
9 the plaintiff Personal Audio and also Brad Liddle who is
10 general counsel and CEO for Personal Audio. We're here
11 and ready.

12 THE COURT: All right. Thank you, Mr. Ward.

13 MS. AINSWORTH: Good morning, your Honor.
14 Jennifer Ainsworth on behalf of CBS Corporation; and with
15 me today is Mr. Steve Lieberman, Sharon Davis, Jennifer
16 Maisel. And then also from CBS is Mr. Dan Wan.

17 THE COURT: All right. Thank you,
18 Ms. Ainsworth.

19 MR. SMITH: And, Your Honor, for consolidated
20 defendant HowStuffWorks, Michael Smith.

21 THE COURT: All right. Thank you, Mr. Smith.
22 Very well. Are there any issues that we need
23 to take up before we start the hearing?

24 MR. LIEBERMAN: Good morning, your Honor,
25 Steve Lieberman. The parties have reached certain

1 agreements subject to the court's approval that we think
2 might expedite the presentation of evidence today. We
3 wanted to present that to the court for the court's
4 consideration.

5 THE COURT: All right.

6 MR. LIEBERMAN: The first agreement was
7 there's a private investigator by the name of Yarborough
8 who had submitted a declaration in this case. After
9 Mr. Yarborough was deposed, the parties agreed that --
10 agreed to stipulate to the facts in the Yarborough
11 declaration and the admissibility of the Yarborough
12 declaration, in lieu of Mr. Yarborough having to travel
13 to Texas to testify live, since his declaration is
14 undisputed.

15 THE COURT: And can you give me a record
16 reference for that? Do you happen to have, in other
17 words, the document number on that declaration?

18 MR. LIEBERMAN: I can get it for you in just
19 one second, your Honor.

20 THE COURT: All right.

21 MR. LIEBERMAN: It was submitted in connection
22 with the reply papers on the motion to transfer, and I'll
23 have the docket number in just a second.

24 No. 2, there are two witnesses whose testimony
25 will be relevant both to the CBS hearing and to the NBC

1 hearing. They're Mr. J.R. Skaggs, who was another
2 private investigator -- and his declaration was also
3 submitted in connection with the papers, but he will be
4 here in person to testify and is in fact in the courtroom
5 right now. And the parties have agreed that Mr. Skaggs'
6 testimony given once should, subject to the court's
7 approval, be equally applicable in both proceedings so
8 that he need not say the same thing twice.

9 And the same would be true with Mr. Brad
10 Liddle who is the general counsel and the CEO of Personal
11 Audio. He will be examined in this proceeding this
12 morning. His testimony will be equally applicable to
13 this afternoon's proceedings, with your Honor's
14 permission, without him having to testify for a second
15 time.

16 THE COURT: All right. I have no problem with
17 those stipulations.

18 They are agreed to by the plaintiff as well?

19 MR. WARD: They are, your Honor.

20 THE COURT: All right.

21 MR. LIEBERMAN: The third item, your Honor,
22 for the convenience of the court we have prepared a
23 binder which has all or virtually all of the exhibits
24 that we would anticipate moving into evidence during the
25 course of the proceedings today. We don't expect that we

1 will be moving into evidence all of them, but we think
2 it's the universe of virtually all of them and would
3 propose to provide a copy to plaintiff's counsel, to your
4 Honor, and to your Honor's clerk and to put one on the
5 witness stand. That will save some time in terms of
6 showing exhibits to the witness.

7 THE COURT: That's fine.

8 MR. LIEBERMAN: Thank you, your Honor.

9 We have also filed or will shortly file in the
10 next few minutes a two-and-a-half-page memorandum which
11 simply has excerpts from various Federal Circuit cases
12 and cases from this court on two issues that discovery
13 has suggested will likely be particularly relevant to the
14 court's ruling and we provided a copy to plaintiff's
15 counsel and with the court's permission I'll hand up a
16 copy of that memorandum to the court.

17 MR. WARD: We saw that this morning for the
18 first time. Don't have a problem with it, assuming if
19 there's something that we think needs to be corrected we
20 have an opportunity to submit a response to that.

21 THE COURT: All right. We'll take up at the
22 end of the hearing whether there's a need for further
23 briefing.

24 MR. WARD: Okay.

25 MR. LIEBERMAN: And I'm told, in response to

1 your Honor's question, that Mr. Yarborough's declaration
2 is DI No. 22, No. 9.

3 THE COURT: Okay. Thank you.

4 MR. LIEBERMAN: This is a copy of the
5 memorandum for the court. This is the court's hearing
6 binder. We've included in the court's binder, for the
7 court's convenience, the declarations that have been
8 filed, although since witnesses are here live we wouldn't
9 expect to try to move those into evidence but we thought
10 the court might want them. If I may put the witness
11 binder on the --

12 THE COURT: Yes.

13 MR. LIEBERMAN: Thank you, your Honor.

14 This is a copy for your Honor's law clerk.

15 THE COURT: Thank you.

16 MR. WARD: Thank you.

17 MR. LIEBERMAN: And, your Honor, we just want
18 to make the court aware that Mr. Dustin Gervais, a CBS
19 employee, will be the corporate designee during the
20 hearing this morning; and he is in the courtroom now.

21 THE COURT: All right. Thank you,
22 Mr. Lieberman.

23 MR. LIEBERMAN: Thank you, your Honor.

24 THE COURT: Is there any request regarding
25 sequestration of witnesses?

1 MR. WARD: We would like to invoke the Rule,
2 your Honor.

3 THE COURT: All right. Mr. Ward, do you have
4 witnesses present in the courtroom at this time?

5 MR. WARD: Only Mr. Liddle, who is our
6 corporate representative. We'd ask that he be excused
7 from the Rule.

8 THE COURT: All right. The corporate
9 representatives can remain in, one for each side clearly.

10 MR. LIEBERMAN: We have two witnesses -- three
11 witnesses who are not corporate representatives; and
12 we're asking them to leave the courtroom now, your Honor.

13 THE COURT: All right. That's fine.

14 Okay. And, Mr. Lieberman, you may proceed
15 with your motion.

16 MR. LIEBERMAN: Thank you, my colleague
17 Ms. Davis will be handling the first witness.

18 THE COURT: All right.

19 MS. DAVIS: We just sent her out, your Honor,
20 because I wasn't sure if -- let me get her.

21 THE COURT: Yes. That's fine.

22 MS. DAVIS: Your Honor, CBS calls Ms. Seana
23 Baruth to the stand.

24 (Oath administered.)

25 MS. DAVIS: May I proceed, your Honor?

1 THE COURT: Yes, Ms. Davis. Go ahead.

2 DIRECT EXAMINATION OF SEANA BARUTH

3 CALLED ON BEHALF OF DEFENDANT CBS

4 BY MS. DAVIS:

5 Q. Good morning, Ms. Baruth. Could you please tell
6 us your full name?

7 A. Seana Baruth.

8 Q. Are you currently employed, Ms. Baruth?

9 A. I am.

10 Q. Who is your current employer?

11 A. Showtime.

12 Q. And what is Showtime's relationship, if any, with
13 CBS Corporation?

14 A. Showtime is a subsidiary of CBS.

15 Q. How long have you been employed by Showtime?

16 A. Two years in April.

17 Q. And what is your current title at Showtime?

18 A. Vice-president of product management Showtime
19 Anytime.

20 Q. And could you explain for us what Showtime Anytime
21 is?

22 A. Showtime Anytime is a product that Showtime
23 subscribers can use across platforms to watch episodes of
24 Showtime programming, including on showtimeanytime.com,
25 which is I believe at issue in this case.

1 Q. And what is -- when you say "showtimeanytime.com,"
2 what is that?

3 A. It's a Web site, a Web destination.

4 Q. Could you tell us just very briefly a little bit
5 about your background in the digital technology area
6 before you came to Showtime two years ago?

7 A. Sure. I was lucky enough to be in the Bay Area
8 during the dot-com explosion in the late Nineties, and
9 that's when I got involved in working on digital media
10 specifically. Since that time it has been the sole focus
11 of my career. I have been at NBC, I have been at
12 Pandora, I have been at the Travel Channel and at Marvel,
13 in all those cases working on digital technology, until
14 most recently joining Showtime two years ago.

15 Q. Where is your office located for Showtime?

16 A. 1633 Broadway in New York.

17 Q. And where do you currently reside?

18 A. In Astoria, Queens, New York.

19 Q. Could you explain a little bit more about what
20 your job responsibilities are as vice-president of
21 product management for the Showtime Anytime product?

22 A. Yes. I am responsible for design, development,
23 and implementation on an ongoing basis for the Showtime
24 Anytime product suite, including showtimeanytime.com.

25 Q. Do you work with a particular team or group of

1 employees with respect to the showtimeanytime.com site?

2 A. Yes. I have ten developers on my team, seven
3 full-time and three contractors.

4 Q. And what do those developers do for you with
5 respect to the showtimeanytime.com site?

6 A. They are responsible for writing the code,
7 implementing features, basically doing everything to
8 render showtimeanytime.com to the end user.

9 Q. Where is that development team for
10 showtimeanytime.com based?

11 A. In New York -- eight of them are in New York
12 currently. One of them, a contractor, is in Halifax,
13 Nova Scotia; and the other is in Florida temporarily
14 although he will be returning to New York full-time in
15 April.

16 Q. Let's just run through that a little bit. Could
17 you provide us with the -- a list of the seven full-time
18 developers that you referred to on your team at Showtime?

19 A. Yes. There's Francia Riesco, Mike Akrum, Matt
20 Caron, Melinda Chin, Jonathan Nonon, Ryan Clark, and
21 Jason Pelzer, are the full-time employees. The
22 contractors are James Richards, Shane Kerr, and Sameera
23 Thangudu.

24 Q. And are all of those employees under your
25 supervision?

1 A. They are.

2 Q. And you mentioned that one of the contractors is
3 based in Halifax, Nova Scotia?

4 A. Yes.

5 Q. Could you tell me which one of those contractors
6 that is?

7 A. Shane Kerr.

8 Q. And you referred to one of your developers working
9 in Florida. Which developer were you referring to?

10 A. That's Matt Caron.

11 Q. And what are the circumstances that led Mr. Caron
12 to be working in Florida?

13 A. He did work in New York and had some personal
14 family issues. So -- he's valuable. He's very good at
15 his job. So, we let him relocate to Florida temporarily;
16 and now he's coming back.

17 Q. I believe you should have a binder of exhibits in
18 front of you, Ms. Baruth. Do you see that?

19 A. I do.

20 Q. If you could turn to Tab 5 in your binder.

21 Are you there?

22 A. I'm there.

23 Q. Do you recognize the exhibit that's been marked
24 for identification as DX-5?

25 A. I do.

1 Q. And could you tell us for the record what the
2 title of the document that's been marked for
3 identification DX-5 is?

4 A. "Plaintiff's First Amended Disclosure of Asserted
5 Claims and Infringement Contentions."

6 MS. DAVIS: Defendants would move the
7 admission of DX-5.

8 MR. PITCOCK: No objection.

9 THE COURT: Exhibit 5 is admitted.

10 BY MS. DAVIS:

11 Q. If you would turn in DX -- Exhibit DX-5, on page
12 6, just to direct you to the right page, do you recognize
13 the list of items on page 6 of DX-5?

14 A. I do.

15 Q. And can you tell me what your understanding is as
16 to what that represents?

17 A. My understanding is that this represents the list
18 of series that have episodes presented on
19 showtimeanytime.com.

20 Q. And which are the episodes listed in that DX-5
21 document that are episodes that are available or series
22 that are available on showtimeanytime.com?

23 A. On page 6, *60 Minutes Sports* is noted and through
24 the end of the list on page 8. Those are the series that
25 have episodes listed and available on

1 showtimeanytime.com.

2 Q. What aspects of the technology that is used for
3 those episodes listed in DX-5 for Showtime -- to make
4 those available online, what aspects of that technology
5 do you and your team provide?

6 A. My team is responsible for the development of
7 showtimeanytime.com; so, the design, the development, the
8 implementation. They write the code that makes the site
9 work.

10 Q. Is there source code associated with the
11 showtimeanytime.com Web site?

12 A. There is.

13 Q. And if you needed to obtain a copy of that source
14 code to make it available for inspection in a litigation,
15 where would you attain that code from?

16 A. I'd get the source code from our source code
17 repository which lives on development machines in
18 New York.

19 Q. What third-party technology, if any, do you use to
20 play video on the showtimeanytime.com site?

21 A. We use a company called "Brightcove." They
22 provide a product that includes a video player that we
23 use on showtimeanytime.com.

24 Q. Where is Brightcove located?

25 A. In Massachusetts.

1 Q. Do you have a particular representative or set of
2 representatives that you deal with from Brightcove?

3 A. We do.

4 Q. And where are those representatives who you deal
5 with from Brightcove with respect to the video player?

6 A. I believe they're in Boston, Massachusetts.

7 Q. Does your team do anything to customize the
8 Brightcove video player product for its use on the
9 showtimeanytime.com Web site?

10 A. We do. The Brightcove product -- for example,
11 there are many different ways that we customize it; but,
12 for example, one way we might customize it is that it has
13 to look and feel like the showtimeanytime.com site. So,
14 we implement changes to it so that it looks and feels and
15 matches the site.

16 Q. Does Showtime use any third parties to host any of
17 the video content relating to showtimeanytime.com?

18 A. We do.

19 Q. And what is the role of those third parties in
20 hosting the video content?

21 A. We use content delivery networks, or CDNs, to host
22 the video files so that no matter where you are, if
23 you're playing back a video file, it can play back most
24 efficiently, I guess would be a good way of saying it.

25 Q. Do these content distribution networks have any

1 involvement in designing or programming the systems that
2 are used to make the video content available?

3 A. No, they do not.

4 MR. PITCOCK: Objection, leading, lacks
5 foundation.

6 THE COURT: Let me see. I'll overrule the
7 objection.

8 Would you restate the question?

9 MS. DAVIS: Certainly, your Honor.

10 BY MS. DAVIS:

11 Q. What role, if any, do the content distribution
12 networks have in designing or programming the systems
13 used to play video on showtimeanytime.com?

14 A. They have no role in programming
15 showtimeanytime.com.

16 Q. In general, who would you say are the most
17 knowledgeable witnesses as to the technology used at
18 Showtime to make Showtime TV episodes available at
19 showtimeanytime.com?

20 A. Myself and the members of my team are the most
21 knowledgeable in that respect.

22 Q. Are there documents related to the technology used
23 at Showtime to make TV episodes available online at
24 showtimeanytime.com?

25 A. Yes, there are documents.

1 Q. And where are those documents located?

2 A. We have some documents that are in our wiki. We
3 have a ticketing system that is an online system to use
4 for breaking work down so the developers can do work, and
5 we have -- we have printed documents and documents on
6 computers in New York.

7 Q. So, to the extent -- you referred to the wiki and
8 the ticketing system. Are those paper documents or
9 electronic documents?

10 A. They are electronic documents.

11 Q. To the extent there are hard copy or paper
12 documents related to this technology, where would those
13 documents be located?

14 A. In our offices in New York.

15 Q. Are there departments other than your team that
16 are involved in the process of putting video episodes
17 onto showtimeanytime.com?

18 A. Yes, there are.

19 Q. Could you identify those departments that have
20 those roles?

21 A. There are two departments. One is the scheduling
22 department, and the other is the programming
23 department -- I'm sorry -- the video operations
24 department.

25 Q. Could you explain what the scheduling department

1 does?

2 A. The scheduling department is responsible for
3 designating what episodes should appear on
4 showtimeanytime.com at what time.

5 Q. Does the scheduling department use a computer
6 system to implement that scheduling -- that scheduling
7 process?

8 A. They do.

9 Q. And where is the scheduling department located?

10 A. They're in New York.

11 Q. Is there a particular individual within the
12 scheduling department that is -- that you work with most
13 closely or is most knowledgeable concerning
14 showtimeanytime.com's work with the scheduling
15 department?

16 A. Yes. I would say that Deborah Meyers is probably
17 the best contact.

18 Q. And where is she located?

19 A. She's in New York.

20 Q. You mentioned the video operations team or
21 department?

22 A. Uh-huh.

23 Q. What does the video operations team do?

24 A. They are responsible for processing the video and
25 pushing it out to the CDNs as well as pushing the

1 metadata for those videos to showtimeanytime.com so that
2 we can present it.

3 Q. And is there an individual in the video operations
4 team that you work with most closely with respect to
5 showtimeanytime.com?

6 A. Yes, there is.

7 Q. And who is that individual?

8 A. His name is Jim Occhiuto.

9 Q. And where is Mr. Occhiuto located?

10 A. He is in New York.

11 Q. Would Mr. Occhiuto be the most knowledgeable
12 witness concerning the role that the video operations
13 team has in the operation of showtimeanytime.com?

14 A. Yes, he would.

15 Q. Does Showtime keep records and information about
16 the extent that showtimeanytime.com is used to access
17 videos?

18 A. We do.

19 Q. What types of information does Showtime keep track
20 of with respect to the usage of showtimeanytime.com?

21 A. Lots of things, like which episodes are played,
22 how frequently they're played, how much -- how much time
23 watched there is, how many visitors we have, that sort of
24 thing.

25 Q. Is there a particular group or team within

1 Showtime that collects and maintains that data?

2 A. There are a couple of teams. My team is one of
3 them. The other is the research team that performs that
4 function for the network as a whole.

5 Q. And is there a particular individual within the
6 research team who would be knowledgeable concerning the
7 information available about showtimeanytime.com usage?

8 A. Yes. A woman by the name of Christine Sanzillo.

9 Q. And where is Ms. Sansoto?

10 A. Sanzillo?

11 Q. Yes. Where is she located?

12 A. She is in New York.

13 Q. Does Showtime also keep financial records related
14 to the showtimeanytime.com product?

15 A. Yes, we do.

16 Q. And is there a particular person within Showtime
17 who would be knowledgeable about those records?

18 A. Yes. A gentleman by the name of Chris Hill.

19 Q. And where is Mr. Hill located?

20 A. He is in New York.

21 Q. Are you familiar with a Showtime employee named
22 Julia Veale?

23 A. I am.

24 Q. Could you tell me who Ms. Veale is?

25 A. She is my boss.

1 Q. And is Ms. Veale knowledgeable about certain
2 aspects of showtime.com -- showtimeanytime.com's business
3 operations?

4 A. She absolutely is.

5 Q. Do you work with her on a regular basis?

6 A. Very much so. Every day.

7 Q. And where is Ms. Veale located?

8 A. She is in New York.

9 Q. Are there any marketing efforts associated with
10 the showtimeanytime.com product?

11 A. There's limited marketing at this point, but there
12 is some marketing.

13 Q. And where are the people who are responsible for
14 the marketing of showtimeanytime.com located?

15 A. They're located in New York.

16 Q. Is there a particular witness who you deal with
17 with respect to -- a particular person who you deal with
18 within Showtime with respect to the marketing of
19 showtimeanytime.com?

20 A. Yes. Virginia Juliano.

21 Q. And where is Ms. Juliano located?

22 A. She's in New York.

23 Q. Are there any departments or areas at Showtime
24 that you have regular dealings with respect to
25 showtimeanytime.com who are based outside of New York?

1 A. Yes, the programming team.

2 Q. And what does the programming team do?

3 A. The programming team is responsible for deciding
4 what series Showtime wants to make or what movies we're
5 going to put on the service. So, they are involved in
6 showtimeanytime.com only to the extent that they provide
7 the television.

8 Q. Where is the programming department located?

9 A. In Southern California.

10 Q. Does the programming department have any
11 involvement in the technology relating to how
12 showtimeanytime.com works?

13 A. No, not at all.

14 Q. Are you familiar with a part of the CBS
15 Corporation referred to as "CBS Interactive"?

16 A. I am.

17 Q. Have you had reason to have contact with CBS
18 Interactive employees as part of your job
19 responsibilities relating to providing video on
20 showtimeanytime.com?

21 A. Yes. Once -- occasionally, and once that I am
22 particularly aware of.

23 Q. And can you tell us what circumstance it was
24 that -- just in general terms what circumstance it was
25 that led you to have contact with CBS Interactive?

1 A. We were -- we were and are investigating a new
2 product feature, and we spoke with Patty Hirsch at CBS
3 Interactive in New York about that feature.

4 Q. Do you know what department or area of CBS
5 Interactive Ms. Hirsch is in?

6 A. I actually don't know her specific department. I
7 just know that when we were talking about providing
8 subscription video directly to consumers, we went to
9 speak to Ms. Hirsch because her department had billing
10 solutions that we wanted to investigate.

11 Q. As part of your job as vice-president for product
12 management for Showtime Anytime, are you familiar with
13 the people who work at Showtime who have responsibilities
14 directly relating to showtimeanytime.com?

15 A. Yes.

16 Q. Are any of those persons with whom you're familiar
17 who have responsibilities relating to showtimeanytime.com
18 located in the State of Texas?

19 A. No, they're not.

20 MS. DAVIS: I have no further questions, your
21 Honor. I pass the witness.

22 THE COURT: All right. Before Mr. Pitcock
23 starts, would you just spell your name for me?

24 THE WITNESS: Yes. My first name is
25 S-E-A-N-A. The last name is B, as in boy, A-R-U-T-H.

1 THE COURT: Okay. Thank you.

2 CROSS-EXAMINATION OF SEANA BARUTH

3 BY MR. PITCOCK:

4 Q. Good morning, Ms. Baruth.

5 A. Hi, Mr. Pitcock.

6 Q. So, if you could look at what was marked as
7 Defendants' Exhibit 5, which were the plaintiff's
8 infringement contentions.

9 A. I still have it open.

10 Q. So, if you'd look at page -- starting on page 3,
11 there's a listing of shows at the Web site www.cbs.com.
12 Do you see that?

13 A. I do.

14 Q. And it includes *60 Minutes*; and if you keep going
15 down the pages, it includes *CSI*, *The Good Wife*, *How I Met*
16 *Your Mother*, other TV shows associated with CBS the
17 television station. Would you agree with that?

18 A. Yes.

19 Q. And you have no responsibilities with respect to
20 any of these CBS shows that are listed from page 3 to
21 page 6 until you get to *60 Minutes Sports*?

22 A. That's correct.

23 Q. And do you have any knowledge of relevant
24 witnesses or documents with respect to any of those
25 shows?

1 A. I do not.

2 Q. And if you'll turn with me to page 9, there's a
3 listing of various podcasts. Do you see that?

4 A. I do.

5 Q. And it goes from page 9 through the top of
6 page 11. Do you see that, ma'am?

7 A. Yes.

8 Q. And do you have any knowledge with regard to
9 relevant witnesses or documents when it comes to any of
10 these podcasts?

11 A. I do not.

12 Q. Now, you mentioned that one of the developers --
13 one of the people who writes code for Showtime Anytime is
14 currently located in Florida; is that correct?

15 A. That's correct.

16 Q. And you also mentioned that one of the contractors
17 who writes code for Showtime Anytime is in Halifax,
18 Nova Scotia?

19 A. Yes.

20 Q. And where would their documents be located?

21 A. They would -- if they had documents that were
22 relevant to showtimeanytime.com, they would be part of
23 the wiki or part of the ticketing system that I mentioned
24 earlier.

25 Q. So, can those documents to the wiki or the

1 ticketing system, can they be uploaded or downloaded
2 anywhere there's an Internet connection?

3 A. They can be if you have the right credentials.

4 Q. So, just so it's clear, the developer in Florida,
5 he has been able to create documents or write code there
6 that could then be used at Showtime Anytime; is that
7 correct?

8 A. Yes, that's correct. He has a specific setup.
9 When he was in New York, we configured his computer in
10 specific ways that would allow him to access those
11 documents and to write code.

12 Q. Now, you mentioned that a company called
13 "Brightcove" in Massachusetts provides the video player
14 that's used with the various shows listed in the
15 infringement contentions for Showtime Anytime; is that
16 correct?

17 A. Yes, that's correct.

18 Q. And where is that source code located?

19 A. The source code -- the customized source code
20 lives in our source code depository.

21 Q. So, the original source code that's used, does it
22 live in Massachusetts?

23 A. I don't have access to Brightcove's operations;
24 so, I don't know.

25 Q. And who would be the most relevant witnesses at

1 Brightcove?

2 A. I'm not sure. We have a contact there by the name
3 of Pablo Silva. He has taken over recently as our
4 account rep, but I don't know if he is a technologist or
5 simply a sales guy.

6 Q. So, just so we're clear, you don't know the
7 programmers who are mostly responsible for coding the
8 original source code for the video player?

9 A. I do not.

10 Q. Now, you mentioned that there were third-party
11 companies that hosted video for Showtime Anytime; is that
12 correct?

13 A. Yes.

14 Q. And, so, are those the content delivery networks?

15 A. They are.

16 Q. And where is the Showtime Anytime content hosted?

17 A. The Web site is hosted on servers in Florida.

18 Q. And the video content itself, does it come from
19 servers in Florida?

20 A. Well, the benefit of content delivery networks is
21 that they are a distributed system. So, there are
22 servers various places that serve the video files
23 specifically.

24 Q. Do you know if there's one in Texas?

25 A. I don't know.

1 Q. I'm just going to show you up here on this -- I'll
2 call it "Elmo," and I'm going to show you a document. I
3 don't know if it's in the defendants' list or not, but
4 it's the initial disclosures for CBS.

5 Can you see that, ma'am?

6 A. I can.

7 Q. And there's a listing here of representatives of
8 CBS who may have technical knowledge of the accused
9 systems. Do you see that?

10 A. I do.

11 Q. And of all the people listed here, other than
12 yourself, who are you familiar with their work?

13 A. With their work?

14 Q. Yes.

15 A. I'm not familiar with any of their work. I met
16 Matt Norlander and Dustin Gervais as a result of this
17 process.

18 Q. But you've never worked with them before?

19 A. Correct.

20 Q. And you don't know what teams they work with?

21 A. Correct.

22 Q. And you don't know where those teams are located?

23 A. Correct.

24 Q. And you don't know where the documents for those
25 teams would be located; is that correct?

1 A. Yes.

2 Q. Do you see this list of persons having knowledge
3 of prior art? Do you see that, ma'am?

4 A. I do.

5 Q. And are you familiar with any of the people on
6 this list?

7 A. I am not. It's cut off here for me. Is Jerry
8 Bonnell the last name on the list?

9 Q. I will show you the entire list, although I can't
10 do it at the same time. Actually it extends to the next
11 page.

12 A. Okay. Then no, I'm not familiar with anyone on
13 this list.

14 Q. Okay. I'm going to show you page 2 just to make
15 sure.

16 A. I'm not familiar with anyone here either.

17 Q. So, is it safe to say that for the companies
18 listed, you have no idea of who the relevant witnesses
19 would be for those companies with respect to the prior
20 art?

21 A. That's correct.

22 Q. You don't know where they're located?

23 A. I don't.

24 Q. You have no idea where their documents might be?

25 A. That's correct.

1 MR. PITCOCK: Your Honor, I'd like to offer
2 the initial disclosures of CBS as Exhibit P-1 into
3 evidence.

4 MS. DAVIS: No objection, your Honor.

5 THE COURT: All right. P-1 is admitted.

6 BY MR. PITCOCK:

7 Q. Ms. Baruth, you've traveled to Los Angeles,
8 Seattle, DC, and Las Vegas for work over the past year or
9 so?

10 A. That's correct.

11 MR. PITCOCK: I have no further questions
12 pending redirect, your Honor.

13 MS. DAVIS: I don't have any questions for the
14 witness, your Honor. May the witness be excused?

15 THE COURT: All right. Just one moment.

16 (Discussion off the record between the court
17 and law clerk.)

18 THE COURT: All right. Thank you, Ms. Baruth,
19 very much.

20 THE WITNESS: Thank you, your Honor.

21 THE COURT: You may step down.

22 MS. DAVIS: May the witness be excused, your
23 Honor?

24 THE COURT: Yes. You are excused.

25 THE WITNESS: Thank you, your Honor.

1 MS. DAVIS: Excuse me for a moment. I'm just
2 going to get the next witness, your Honor.

3 THE COURT: Sure.

4 (Oath administered.)

5 MS. DAVIS: Your Honor, CBS calls at this time
6 Mr. Matt Norlander.

7 THE COURT: All right. Mr. Norlander, I think
8 you'll need to raise that mic a little bit. You're a
9 little taller than the last witness.

10 MS. DAVIS: I think maybe a foot, your Honor.

11 DIRECT EXAMINATION OF MATTHEW NORLANDER

12 CALLED ON BEHALF OF DEFENDANT CBS

13 BY MS. DAVIS:

14 Q. Good morning, Mr. Norlander. Could you please
15 tell us your full name?

16 A. Matthew Robert Norlander.

17 Q. Are you currently employed, Mr. Norlander?

18 A. Yes.

19 Q. Who is your current employer?

20 A. CBSSports.com is my primary current employer.

21 Q. And could you explain a little bit about how that
22 relates to CBS Corporation that's the defendant here?

23 A. I am a full-time college basketball writer for
24 CBSSports.com and those duties also include producing and
25 uploading the podcasts for CBSSports.com, specifically

1 the *Eye on College Basketball Podcast*.

2 Q. Okay. And is that CBSSports.com part of the CBS
3 Corporation family of companies?

4 A. Yes.

5 Q. How long have you been employed at CBS?

6 A. Since December of 2010.

7 Q. And you mentioned you have certain
8 responsibilities relating to podcasts, in particular the
9 *Eye on College Basketball Podcast*. Could you explain a
10 little bit about what you do with respect to the
11 production of the *Eye on College Basketball Podcast*?

12 A. Absolutely. Basically I make sure the podcast
13 goes from a recording on a computer to being uploaded and
14 hosted by CBSSports.com using a specific software tool on
15 the back end on cstv.com which falls under the
16 CBSSports.com umbrella. So, it's my responsibility to
17 produce and edit and upload that podcast so it can be
18 downloaded off CBSSports.com; and that's also tied to the
19 downloads on iTunes.

20 Q. Where is your office located?

21 A. I work out of my home.

22 Q. And where is your home currently?

23 A. In Norwalk, Connecticut.

24 Q. And where is Norwalk, Connecticut, in relationship
25 to New York City?

1 A. It's approximately 35 miles north of New York
2 City.

3 Q. You mentioned, with respect to your explanation of
4 what you do with respect to the podcasts, a "software
5 tool." Could you explain just a little bit about what
6 you're referring to there as the software tool?

7 A. Sure. It's basically an interface where -- you
8 know, there are a number of podcasts all connected to
9 CBSSports.com on this interface, dozens, more than 60;
10 and specifically for me, I select one of them. Within
11 that, I log in an episode title. I upload the podcast
12 via FTP to the server and from that -- this tool is
13 connected to that FTP server. So, I'll type in the
14 rundown, type in the title, click "submit"; and basically
15 from there it filters right into the RSS feed.

16 Q. Do you have a binder of documents up there in
17 front of you?

18 A. Yes.

19 Q. Could you turn to tab DX -- what's DX-30 in the
20 binder that's up there in front of you?

21 A. Yes.

22 Q. Are you there?

23 A. I am.

24 Q. Do you recognize the document that's been marked
25 for identification as DX-30?

1 A. Yes.

2 Q. Could you explain to the court what DX-30 is?

3 A. Yes. This is the interface/tool that I use to
4 upload the podcasts on a twice-weekly basis throughout
5 the season, and specifically Podcast No. 30 is the one
6 that I used. But yes, this is the tool essentially that
7 I use to select and then use to upload the podcast.

8 MS. DAVIS: Your Honor, defendants move the
9 admission of DX-30.

10 MR. PITCOCK: Your Honor, we object to the
11 admission of this document. It was never produced to us
12 in litigation to date. It certainly wasn't produced to
13 us before the deposition of this witness.

14 THE COURT: Ms. Davis?

15 MS. DAVIS: Your Honor, this is a document to
16 illustrate the testimony of the witness today; and he can
17 explain, if you want, where he got it and how he obtained
18 it.

19 MR. PITCOCK: Your Honor, respectfully, if
20 they wanted to use this document, they should have
21 produced it so we would have had a chance to question the
22 witness on it before in his deposition.

23 MS. DAVIS: Your Honor, if I may, this
24 particular issue came up in the course of the questioning
25 of the witness during his deposition testimony.

1 MR. PITCOCK: Your Honor, he submitted a
2 declaration nine months ago that had to do with the
3 podcasting tool and, so, this issue has been well-known
4 to counsel for the defendants for a long time and it
5 should have been produced long ago if they wanted to use
6 it here.

7 THE COURT: Ms. Davis, I do think that you
8 have an obligation to produce the relevant documents
9 before the hearing. At this point I'll sustain the
10 objection, but you can question him about the subject
11 matter of it.

12 MS. DAVIS: Certainly, your Honor.

13 BY MS. DAVIS:

14 Q. Let me ask you to turn to a different exhibit, to
15 DX-5 in your binder, Mr. Norlander.

16 Are you there?

17 A. I am.

18 Q. And do you recognize DX-5?

19 A. Apologies. I am on D005.

20 THE COURT: I think that's what she's talking
21 about.

22 BY MS. DAVIS:

23 Q. Yeah. I think it should be Tab 5.

24 A. Okay. Sorry. Yes.

25 Q. Okay. If you could turn to around page 9 of

1 Exhibit 5 where there's a list of podcasts.

2 A. Yes.

3 Q. Do you see that?

4 A. Yes, I do.

5 Q. And are you familiar with that list of podcasts?

6 A. Yes.

7 Q. Which of the podcasts that are listed on -- in
8 DX-5 there are CBS Sports podcasts?

9 A. Specifically the *Fantasy Football Podcast*, the
10 *Fantasy Baseball Podcast*, the *College Football Podcast*,
11 the *College Basketball Podcast*, the *Football Podcast*, the
12 *Basketball Podcast*, and the *Baseball Podcast*; and that
13 correlates, by the way, with the cstv.com extension on
14 the URL which falls under the umbrella of CBSSports.com
15 and has for many years.

16 Q. And which of those CBS Sports podcasts in
17 Exhibit 5 is the one that you personally are responsible
18 for publishing on the Internet?

19 A. I am responsible for the *College Basketball*
20 *Podcast*.

21 Q. Is the same software tool that you described
22 earlier that you use for the Eye on Basketball -- *Eye on*
23 *College Basketball Podcast* used by others at CBS Sports
24 to publish other CBS Sports podcasts?

25 A. Yes.

1 Q. And how do you know that?

2 A. I know that because -- I know it for a couple of
3 reasons. One, I have a colleague on the sports desk at
4 CBSSports.com, your Honor, who taught me how to use it
5 essentially; but in first learning of it, he both went
6 over on the phone and, you know, there -- he discussed
7 with many of my other colleagues that are like me, that
8 are writers, basically how to use it. We all use the
9 same one on the interface that I discussed earlier. With
10 all of us dealing with podcasts, it's all the same tool,
11 it's all the same procedure in terms of uploading the
12 podcasts to CBSSports.com. So, yes, we all use the same
13 protocol when it comes to uploading the podcasts to the
14 site.

15 Q. And is there information that you can tell from
16 the tool itself that the tool is being used for podcasts
17 other than the podcasts that you yourself are publishing?

18 MR. PITCOCK: Objection, form.

19 A. Yes. You can tell that the podcast being used by
20 others in -- simply by looking at recent upload times.
21 For example, if you would check in the past week or so,
22 you would have seen that there would have been an *Eye on*
23 *College Basketball Podcast* that would have been uploaded
24 to the site on a specific day in February. You could see
25 the same of the *Eye on Basketball*, the *Eye on College*

1 *Football*, all of these. It indicates to you both the
2 very first podcast that was ever uploaded in one column
3 and then the most recent podcast that was uploaded in the
4 column adjacent to it.

5 BY MS. DAVIS:

6 Q. And are you familiar, from your work with the
7 software tool, of whether or not the podcasts that are
8 listed as CBS Sports podcasts in DX-5 are also resident
9 on that same list on the software tool?

10 A. Yes, they are in the same -- under the same --
11 they all fall under the same umbrella. They all are on
12 the same software tool.

13 Q. Do you have an understanding as to how the
14 software tool that is used by CBS Sports for its podcasts
15 was developed?

16 A. Yes, a general understanding.

17 Q. And what is that understanding?

18 A. The understanding is that it was developed by two
19 men, two former employees at CBSSports.com who are no
20 longer there.

21 Q. And did you -- do you have an understanding as to
22 who specifically those former CBS employees are who
23 worked on this particular software tool?

24 A. Yes. Jacques Dupoux and Paul Bronshteyn.

25 Q. And how did you attain that understanding as to

1 the two former employees who worked on this podcasting
2 tool used by CBS Sports?

3 A. I was informed of this by my colleague at
4 CBSSports.com, Adam Aizer, who is basically the
5 connection between those men and me and that -- Adam was
6 the one who also informed me and taught me how to use the
7 tool.

8 Q. And have you seen any information concerning where
9 Mr. Bronshteyn and Mr. Dupoux are located now since they
10 have left CBS?

11 A. I have researched and looked up their current
12 whereabouts and living -- where they live, yes.

13 Q. If you would turn in your binder to Exhibit 32 --
14 or DX-32 marked for identification.

15 A. Yes.

16 Q. Do you recognize Exhibit 32?

17 A. I do.

18 Q. And could you tell the court what Exhibit 32 is?

19 A. This is a *LinkedIn* page for Jacques Dupoux that I
20 have seen before.

21 Q. Where did you see Mr. Dupoux's *LinkedIn* page
22 before?

23 A. I've looked at it on my computer.

24 MS. DAVIS: Defendants move the admission of
25 DX-32.

1 MR. PITCOCK: Your Honor, again this is an
2 exhibit that's never been produced to us. It wasn't
3 submitted as an exhibit to his declaration even though
4 this person was named; and as we will find out in cross,
5 he's never met this person before in his life.

6 MS. DAVIS: Your Honor, if I may briefly,
7 Mr. Dupoux's *LinkedIn* page, as well as Mr. Bronshteyn's
8 *LinkedIn* page which we'll get to, were both submitted as
9 exhibits with respect to the original motion to transfer.
10 The only change with respect to Exhibit 32 and what we'll
11 be talking about in DX-33 is that we updated them just to
12 double-check that they were still timely since it's been
13 about six months since the original papers were filed.
14 But we provided copies of those with respect to the
15 original filing on the motion to transfer, your Honor.
16 So, there's really no surprise here.

17 THE COURT: I guess my real issue with this
18 document is that it is a *LinkedIn* page, and I don't have
19 any reason to believe that it's anything other than
20 hearsay representation from the Internet. We don't know
21 if it is accurate, up-to-date, or otherwise correct. If
22 the only thing this witness did was look up Mr. Dupoux on
23 *LinkedIn*, I'm afraid that's not what I would consider a
24 firsthand knowledge basis for the testimony. I'll
25 sustain the objection to Exhibit 32.

1 MS. DAVIS: Your Honor?

2 THE COURT: Yes.

3 MS. DAVIS: Perhaps I can try and lay a little
4 additional foundation. I do believe that this would be
5 within the confines of Rule 803(17) exception to the
6 hearsay rule; but perhaps I can lay a little foundation
7 for that, your Honor.

8 THE COURT: All right. Go ahead.

9 BY MS. DAVIS:

10 Q. Mr. Norlander, first of all, with respect to
11 Mr. Dupoux's *LinkedIn* page at DX-32, when did you last
12 look at the *LinkedIn* profile for Mr. Dupoux?

13 A. I last looked at the *LinkedIn* profile for
14 Mr. Dupoux last night, in addition to a number of other
15 sources that Mr. Dupoux specifically identifies himself
16 online, his *Twitter* page, his *Facebook*, and his
17 meetup.com profile. As of last night all indicate that
18 he is located in New York City.

19 Q. Let me ask another question. In your area in
20 journalism, sportswriting in particular, is *LinkedIn* a
21 resource that is typically used to determine where people
22 are currently employed?

23 A. It would be --

24 MR. PITCOCK: Objection, lacks foundation.

25 THE COURT: I'll overrule the objection.

1 A. It would absolutely be a source that I and many
2 other journalists would use to help identify the location
3 of a certain subject for any sort of story. It would not
4 be, you know, the sole source but like I said, I mean, I
5 diligently would try and find second, third, fourth
6 sources on locations and I did that with *Twitter*, his
7 *Facebook*, and *meetup.com* profile. As of last night, all
8 specifically state that he lives in Brooklyn, New York,
9 as of last night in his latest profile updates.

10 THE COURT: Mr. Lieberman, give you a chance
11 to be heard.

12 MS. DAVIS: Did you mean --

13 THE COURT: I'm sorry. Mr. Pitcock. I
14 apologize.

15 MR. PITCOCK: None of the other sources that
16 are supposedly being used to authenticate this document
17 have been produced or submitted into evidence. I don't
18 think that he can establish a foundation that it's a
19 business record or some other exception to the hearsay
20 rule. And again, as we will learn on cross, this witness
21 has never met them. He has no way of authenticating
22 their pictures or history or experience other than by,
23 you know, thirdhand hearsay sources.

24 THE COURT: I'll sustain the objection. I --
25 it's no surprise that this witness might rely on items

1 I like *LinkedIn* and *Twitter*. I'm sure he relies on hearsay
2 all the time. This is clearly hearsay. So, I'll sustain
3 the objection.

4 BY MS. DAVIS:

5 Q. Mr. Norlander, in your experience, is it a typical
6 practice in your work as a journalist to use various
7 online resources to locate individuals?

8 A. Yes.

9 Q. And based on what you have done in connection with
10 this matter, do you have a belief as to where Mr. Dupoux
11 is located?

12 A. I do. I believe that he's located in New York.
13 My history in the journalism field would corroborate that
14 information. Yes.

15 MR. PITCOCK: Objection, your Honor. This is
16 again based on hearsay that's already been excluded.

17 THE COURT: I'll sustain the objection.
18 There's no foundation that this witness knows Mr. Dupoux.
19 He's simply saying that he has looked on the Internet and
20 formed a belief about where he lives. That's clearly
21 hearsay. I'll sustain the objection.

22 BY MS. DAVIS:

23 Q. With respect to Mr. Bronshteyn, Mr. Norlander, did
24 you go through the same process that you've already
25 described with respect to Mr. Dupoux?

1 A. Yes. And I'd like to add that I have also spoken
2 with my colleague at CBSSports.com, Mr. Aizer, who has
3 connection with these men and who has indicated to me
4 that they live in the current locations.

5 MR. PITCOCK: Doesn't help them with the
6 hearsay objection, your Honor.

7 THE COURT: I'll sustain the hearsay
8 objection. If the witness with knowledge was here, it
9 would be a different matter; but I'll sustain the
10 objection.

11 BY MS. DAVIS:

12 Q. Mr. Norlander, with respect to the CBS Sports
13 podcasts that have been identified in this case in DX-5,
14 are there any potential witnesses that you're aware of
15 who are located in the State of Texas?

16 A. There are no potential witnesses located in the
17 State of Texas.

18 MS. DAVIS: I have no further questions, your
19 Honor. I pass the witness.

20 CROSS-EXAMINATION OF MATTHEW NORLANDER

21 BY MR. PITCOCK:

22 Q. If you could open your binder to DX-5, please.

23 Now, on pages 3 through 8, there's a listing
24 of various TV episodes which were made available online.
25 Do you have any knowledge of relevant information with

1 respect to any of the shows?

2 A. Can you be more specific with the question,
3 please, sir?

4 Q. Absolutely. So, do you have any knowledge of the
5 operation, design, or development of any of the shows
6 listed on page 3, starting with *48 Hours*, through *Gigolos*
7 on page 8?

8 A. I do not.

9 Q. Do you have any knowledge of the relevant
10 witnesses or documents with respect to any of these
11 shows?

12 A. I do not.

13 Q. Now, if you'll turn to page 9, there are podcasts
14 listed, from *60 Minutes* on page 9 to *Courtwatch* on
15 page 10. Do you see that, sir?

16 A. I apologize.

17 Q. I'll repeat the question. It's easy to --

18 A. I see the -- I accidentally flipped to Exhibit 9
19 in the binder. Apologies.

20 Q. No problem. I'll repeat my question just because
21 I want the record to be clear.

22 So, there are a listing of podcasts on page 9,
23 starting with *60 Minutes*, that goes to -- well, it
24 extends on beyond, but to *Courtwatch* on page 10. Do you
25 have any knowledge of the design or operation or

1 development of any of those podcasts?

2 A. No.

3 Q. And the only podcasts you have any knowledge of
4 are the sports podcasts starting with *Fantasy Football* on
5 page 10 through *Baseball* on page 11; is that correct?

6 A. Yes.

7 Q. And of those sports-related podcasts, you only run
8 one of them, the *College Basketball Podcast*; is that
9 correct?

10 A. Yes.

11 Q. Now, you have been at CBS for two years, sir?

12 A. No. I have been at CBSSports.com since December
13 of 2010.

14 Q. You don't have a technical degree?

15 A. I do not have a technical degree.

16 Q. You're a writer.

17 A. I am a writer.

18 Q. Have you ever seen a patent infringement analysis?

19 A. I have not seen a patent infringement analysis to
20 my knowledge.

21 Q. Do you understand that this is a hearing about
22 relevant witnesses and documents related to a patent
23 case?

24 A. It's my general understanding that that is what
25 this case pertains to.

1 Q. Now, you mentioned "podcasting tool." Is what you
2 learned about podcasting tool, is that all from
3 Mr. Aizer?

4 A. Yes.

5 Q. And he lives in Florida?

6 A. Yes.

7 Q. And that's where CBS Sports is headquartered,
8 correct?

9 A. CBSSports.com specifically is headquartered in
10 Florida.

11 Q. Now, of the other sports-related podcasts, one of
12 them is run at least in part by somebody in North
13 Carolina?

14 A. Yes.

15 Q. And another one is run from somebody in Minnesota?

16 A. Yes.

17 Q. And there's one that used to be run from Indiana?

18 A. Yes.

19 Q. Now, do you recall the declaration that you
20 submitted in this case, sir?

21 A. I do.

22 MR. PITCOCK: Your Honor, I'd like to mark as
23 Exhibit P-2 the "Declaration of Matt Norlander in Support
24 of Defendants' Motion to Transfer Venue."

25 THE COURT: All right. You're marking it at

1 this time?

2 MR. PITCOCK: Offering it into evidence, your
3 Honor. I'm sorry.

4 THE COURT: Okay. Is there any objection,
5 Ms. Davis?

6 MS. DAVIS: No objection, your Honor.

7 THE COURT: All right. P-2 will be admitted.

8 MR. PITCOCK: Permission to approach, your
9 Honor?

10 THE COURT: Yes.

11 BY MR. PITCOCK:

12 Q. Is this the declaration you submitted in support
13 of CBS's motion to transfer venue?

14 A. It appears to be that, yes.

15 Q. Now, in your declaration at page 7, there are
16 various statements regarding the podcasting tool that you
17 referred to in your testimony; is that correct?

18 A. Could you -- are you referring to the booklet
19 here, specifically Exhibit 7? You said "page 7."

20 Q. Actually -- I'm sorry. I may have misspoke. I
21 meant paragraph 7 of P-2, which is your declaration.

22 A. Okay. Yes.

23 Q. Now, do you recall that early in your deposition
24 last week you couldn't remember which podcasts used the
25 tool?

1 A. No. That's not entirely accurate.

2 Q. Well, do you remember testifying you couldn't be
3 sure which podcasts used the tool?

4 A. I would not say that's a fair statement or a fair
5 question because under the -- my impression of the
6 questions that you were asking in the deposition, I
7 basically misinterpreted what you were asking and, so, my
8 answer might have led you to believe that, but that's
9 not -- that's not the message that I thought I was
10 conveying or trying to get across specifically and, so,
11 later in the deposition I made sure it would be
12 crystal-clear about the podcast tool and its universal
13 input from other CBSSports.com employees.

14 Q. In fact, you did that in response to questions
15 from your counsel, Ms. Davis, right?

16 A. Yes.

17 Q. And you conferred with your counsel during every
18 deposition break we took, didn't you, about your
19 testimony?

20 A. Yes.

21 Q. Now, if you turn back to your declaration, you
22 understand that you swore under penalty of perjury that
23 you had personal knowledge of these facts?

24 A. Yes.

25 Q. And you don't mention anywhere in here that all

1 these facts came from Mr. Aizer?

2 A. Can you repeat the question, please?

3 Q. Well, Mr. Aizer, who lives in Florida, isn't
4 mentioned anywhere in your declaration, correct?

5 A. Mr. Aizer does not appear to be mentioned anywhere
6 in my declaration.

7 Q. And you didn't mention that Mr. Aizer was the
8 person who taught you how to use this podcasting tool?

9 A. My declaration does not show specifically that I
10 mentioned Mr. Aizer taught me how to use the software
11 tool.

12 Q. Now, the two people who are mentioned as creating
13 the software tool, have you ever met them?

14 A. I have not. If you're referring to Mr. Paul
15 Bronshteyn and Jacques Dupoux, I have not met them.

16 Q. Now, were you employed by CBS at the time this
17 tool was developed or allegedly developed?

18 A. I was not, to the best of my knowledge.

19 Q. Now, when you spoke to Mr. Aizer to get this
20 information, was he in Florida?

21 A. Yes.

22 Q. And, in fact, Mr. Aizer runs multiple podcasts --
23 or you believe he runs multiple podcasts from Florida
24 that are listed in the initial -- or I'm sorry -- the
25 infringement contentions?

1 A. I believe that he -- I know that he was
2 responsible and still is for running the *Fantasy Football*
3 *Podcast*. I believe he might have had a specific hand in
4 the -- also the *Fantasy Baseball Podcasts* because those
5 are the only two podcasts that are produced, uploaded,
6 edited from the CBSSports.com headquarters in Fort
7 Lauderdale, Florida.

8 Q. Well, the others are spread all around the country
9 except for yours, correct?

10 A. They're in a very few specific remote locations.

11 Q. Now, would you agree with me that Mr. Aizer has
12 relevant knowledge regarding this litigation?

13 A. Yes.

14 Q. Would you agree with me that he probably has more
15 relevant knowledge than you do regarding this litigation?

16 A. Yes.

17 Q. I know it's tough to be a relatively young and new
18 employee. Do you think your employer and source of
19 income would have been upset if you had refused to sign
20 this declaration?

21 MS. DAVIS: Objection, your Honor.

22 Speculative.

23 THE COURT: What's the objection?

24 MS. DAVIS: Objection, your Honor. He's
25 calling for speculation.

1 THE COURT: I'll overrule the objection.

2 A. Can you repeat the question, please?

3 BY MR. PITCOCK:

4 Q. Yes. The question is: Do you think your
5 employer, your source of income, CBS, would have been
6 upset with you if you had refused to sign this
7 declaration?

8 A. I want to be specific here. I'm employed by
9 CBSSports.com and not CBS. These are two very, very
10 different entities, your Honor. And it is my belief that
11 they would not have been upset if I had refused to sign
12 this declaration, CBSSports.com specifically.

13 Q. Do you have any idea why Mr. Aizer didn't submit a
14 declaration?

15 A. I have no idea.

16 Q. Do you think it could be because he lives in
17 Florida?

18 A. Sir, I have no --

19 MS. DAVIS: Objection, your Honor. Same
20 objection. He's just asking the witness now to speculate
21 about things he can't possibly have knowledge of.

22 THE COURT: I'll sustain that objection.

23 MR. PITCOCK: No further questions.

24 THE COURT: Anything further, Ms. Davis?

25 **

1 REDIRECT EXAMINATION OF MATTHEW NORLANDER

2 BY MS. DAVIS:

3 Q. Just very briefly, Mr. Norlander.

4 Are there any current CBS Sports employees who
5 would have personal knowledge with respect to the design
6 and development of the software tool?

7 A. Can you -- I apologize. Can you please repeat the
8 question?

9 Q. Sure, sure. The software tool that we have been
10 talking about --

11 A. Yeah.

12 Q. -- are there any current CBS Sports employees who
13 would have personal knowledge with respect to the design
14 or the development of that software tool?

15 MR. PITCOCK: Objection, foundation, your
16 Honor.

17 THE COURT: I'll allow the question, but I --
18 in any event, we'll see what the foundation is. But the
19 witness can say whether he knows.

20 A. I believe so, yes. Yeah, I -- I apologize if I'm
21 misinterpreting the question here. But are you asking if
22 there is a current CBS employee that understands how the
23 tool works?

24 BY MS. DAVIS:

25 Q. My question was going to the design and

1 development, but let me --

2 A. Oh.

3 Q. Let me ask you a different question.

4 A. Okay.

5 Q. Has the tool that you use to put the podcasts
6 online for CBSSports.com changed during the time that you
7 have been at cbs.com?

8 A. No.

9 Q. CBSSports.com. I apologize.

10 A. It has not changed at all. It has been the exact
11 same procedure, the exact same steps along the way from
12 the very beginning to now.

13 Q. And was that tool in use at CBSSports.com when you
14 first arrived at CBSSports.com?

15 A. Yes.

16 Q. And based on your conversations with your
17 colleagues at CBSSports.com, did you have an
18 understanding as to whether that tool had been in place
19 for some time before you arrived?

20 MR. PITCOCK: Objection, your Honor.
21 Foundation, hearsay.

22 THE COURT: Well, I -- your question is
23 whether he has been told that by other employees?

24 MS. DAVIS: Based upon his work conversations
25 with his colleagues, your Honor, whether he had

1 understanding when he got there as to whether or not this
2 was a new tool or this was a tool that had been in place
3 for a while.

4 THE COURT: I'll allow him to answer that
5 question.

6 A. Yes. When I began working there, I began working
7 with the podcasts, I was -- frankly I was told how it
8 works and informed that it had been there and yes the --
9 the institution of the tool was in existence before I
10 began working at CBSSports.com.

11 BY MS. DAVIS:

12 Q. And the colleagues that you work with at
13 CBSSports.com, do any of them get involved in developing
14 the technology that is used for putting the podcasts on
15 the Web site?

16 MR. PITCOCK: Objection, foundation.

17 THE COURT: I think you do need to lay a
18 foundation for that first.

19 MS. DAVIS: Certainly.

20 BY MS. DAVIS:

21 Q. Are you familiar with the work that your
22 colleagues who also are responsible for publishing
23 podcasts at CBSSports.com do?

24 A. Currently?

25 Q. Yes.

1 A. Yes. Yes.

2 Q. And based on your interaction with those
3 colleagues, do any of those colleagues who publish the
4 podcasts at CBSSports.com have any involvement in the
5 technological development of the programs and tools used
6 to post those podcasts online?

7 MR. PITCOCK: Objection, foundation, hearsay.

8 THE COURT: He can answer whether he knows if
9 they do or not.

10 A. Are you asking if my current colleagues at
11 CBSSports.com had any involvement with the development of
12 the tool?

13 BY MS. DAVIS:

14 Q. And whether they are -- currently in their job
15 responsibilities are involved with developing that
16 technology.

17 A. They are not.

18 MR. PITCOCK: Objection, your Honor. Again --

19 THE COURT: I'll overrule --

20 MR. PITCOCK: That's a different question --

21 THE COURT: As to that question, I'll overrule
22 it.

23 MS. DAVIS: I have no further questions, your
24 Honor.

25 THE COURT: All right. I have just a couple

1 of questions, and then we'll let Mr. Norlander go.

2 EXAMINATION OF MATTHEW NORLANDER

3 BY THE COURT:

4 Q. Just to make sure I understand your testimony,
5 Mr. Norlander, you are responsible for creating the
6 content of the basketball podcast that you've testified
7 about; is that right?

8 A. Your Honor, not entirely. I was the former host
9 of the podcast. Now there's a different host who is a
10 bit older than I am and not as tech savvy. So, while I
11 still contribute to the podcast and occasionally talk on
12 it, the only consistency in role that I've had with the
13 podcast is, because I'm a little more tech savvy with it,
14 I have been responsible for uploading the podcasts from
15 its inception at CBSSports.com, specifically *Eye on*
16 *College Basketball* live, through the FTP and out to the
17 CBSSports.com servers.

18 Q. And you mentioned there are more than 60 other
19 CBSSports.com podcasts; is that right?

20 A. There are. And, your Honor, just to be specific,
21 some of those are now defunct. Some of them are still
22 active. But they're all housed under the same section
23 basically on cstv.com which CBSSports.com long ago
24 overtook. It's just -- the nature of podcasts is that
25 you -- you know, people develop them, they want to go be

1 able to find them and listen to them. So, you need to
2 house and archive all of these podcasts so this is where
3 they originally were and in order to still have all
4 the -- that they remain there.

5 Q. So, there are people like you who are responsible
6 for hosting or creating the content of these podcasts
7 and -- is that right?

8 A. There are. And most of them are similar to me in
9 job description. We're writers, we're bloggers, but also
10 have, you know, a knack for being able to record and
11 produce podcasts.

12 Q. And they're, to the best of your knowledge,
13 scattered around the country?

14 A. Specifically there are two in North Carolina.
15 There is one in Minnesota. And the baseball one used to
16 be -- is no longer in existence but used to be in
17 Indiana. So, now they are only in two other specific
18 states outside of where I am.

19 Q. All 60 of them are just in those locations?

20 A. I can't speak specifically to the history of every
21 single podcast; but most of them, the ones that are
22 defunct, to my knowledge were produced in-house at
23 CBSSports.com. Only recently with the advent of Skype
24 and the ability to upload these podcasts to CBSSports.com
25 servers with writers that had the capability and

1 knowledge like myself did they start to ask us, you know,
2 "Since you can do this, you can take it off our hands at
3 the desk here if you want to just upload the podcast
4 yourself," Matt in Connecticut or one of my colleagues
5 who live in North Carolina.

6 Q. So, the others that you mentioned that are based
7 at CBSSports.com, that's at the headquarters in Florida?

8 A. Yes. Fort Lauderdale, Florida, is the hub for
9 CBSSports.com's editorial desk in addition to, you
10 know -- anything relating to CBSSports.com from a
11 headquarters standpoint is located in Fort Lauderdale,
12 Florida, your Honor.

13 Q. All right. Very good.

14 THE COURT: Thank you, Mr. Norlander.

15 THE WITNESS: Thank you, your Honor.

16 THE COURT: You may step down.

17 THE WITNESS: Good morning, and thank you.

18 THE COURT: Good morning.

19 MS. DAVIS: May the witness be excused, your
20 Honor?

21 THE COURT: Yes, the witness is excused.

22 MS. DAVIS: Your Honor, CBS calls Dustin
23 Gervais.

24 (Oath administered.)

25 **

DIRECT EXAMINATION OF DUSTIN GERVAIS

CALLED ON BEHALF OF DEFENDANT CBS

BY MS. DAVIS:

Q. Mr. Gervais, could you please state your name for us?

A. Dustin Derrick Gervais.

Q. Are you currently employed, Mr. Gervais?

A. I am.

Q. Who is your current employer?

A. CBS Radio News.

Q. And what is the relationship between CBS Radio News and CBS Corporation?

A. CBS Radio News is part of CBS News, CBS News is part of CBS Broadcasting, and then CBS Broadcasting is part of the greater CBS Corporation.

Q. How long have you been employed at CBS?

A. Since 2004.

Q. Can you describe briefly for us your educational background?

A. I got a bachelor's degree from Hofstra University where I was the top of my class. I majored in audio-radio and philosophy.

Q. What is your current title at CBS Radio News?

A. I am the new media manager there.

Q. How long have you been the new media manager for

1 CBS Radio News?

2 A. Since 2010.

3 Q. And could you explain to us what your job
4 responsibilities are as the new media manager for
5 CBS Radio News?

6 A. I'm basically responsible for the distribution of
7 all CBS Radio News content outside of the traditional
8 terrestrial broadcast radio content.

9 Q. Is one of those ways that CBS radio content is
10 distributed through the Internet?

11 A. Yes. We distribute it through our Web site at
12 cbsradionews.com which is part of cbsnews.com and then
13 also cbsradionewsfeed.com.

14 Q. What responsibilities do you have with respect to
15 podcasts that may be made available on the CBS Radio Web
16 sites?

17 A. So, I am involved with the production, creation of
18 some of the content, transferring the content from
19 various areas; and then I'm also responsible for
20 designing the code that goes around the podcast itself on
21 the Web sites.

22 Q. Where is your office located?

23 A. In New York, Manhattan.

24 Q. And where do you currently reside, Mr. Gervais?

25 A. I live in Brooklyn.

1 Q. Is there a -- strike that.

2 Do you work with other employees at CBS Radio
3 News to put the podcasts on the Web sites?

4 A. I do.

5 Q. And who is it that you work with to do that?

6 A. I work with a number of entry-level people --
7 they're called "desk associates" -- and I have trained
8 them all in using the tools that are -- that we use to
9 upload these podcasts. And they're all in New York.

10 Q. You mentioned that you're responsible for the code
11 that goes around the podcasts. Is there a third-party
12 vendor that's involved in some of the technology for
13 playing the podcasts?

14 A. Yes. Harris Media is our third-party vendor; and
15 they use a subcontractor called "Synergy" who I believe
16 actually wrote the code for that, for the podcasts
17 themselves.

18 Q. If you would in the binder in front of you turn to
19 Tab 5, or DX-5 --

20 A. Okay.

21 Q. -- that's already been admitted into evidence.

22 A. I'm there.

23 Q. And if you would turn to page -- I think it's
24 around page 9 --

25 A. Uh-huh.

1 Q. -- of that document DX-5. Are you there?

2 A. I'm on it.

3 Q. Are you familiar with the list of episodes or
4 podcasts that's included in DX-5?

5 A. Yes. I am responsible for all of the podcasts on
6 page 9 and then on the top of 10, *What's in the News* and
7 *Now. What.* and *Courtwatch*.

8 Q. The technology that CBS Radio News uses for making
9 the podcasts available that are listed there in DX-5 that
10 you just identified that you have responsibility for, is
11 that technology in-house at CBS Radio or does it also
12 involve outside technology?

13 A. The technology of the podcasts themselves is part
14 of -- controlled by Harris Media, and then Synergy wrote
15 that code.

16 Q. Where is Synergy located?

17 A. Well, let me say Harris Media is in New York; and
18 then Synergy is in New Jersey.

19 Q. And can you explain to the court what it is that
20 Synergy provides in -- that allows CBS Radio News to put
21 the podcasts on the Web sites?

22 A. They've written the code that enables us to take
23 the content and metadata and create a podcast out of it.

24 Q. Is there source code associated with the podcasts
25 being put on the Web sites for CBS Radio News?

1 A. Yes, there is.

2 Q. And if you needed to obtain a copy of that source
3 code for inspection in a litigation, where would you go
4 to obtain that code?

5 A. We would go to Harris Media first. They would be
6 holding the code.

7 Q. Do you have a particular representative or set of
8 representatives that you deal with from Harris Media or
9 Synergy?

10 A. Yes. I am in contact with Lee Harris on a regular
11 basis and Ryan Froehlich from Synergy.

12 Q. Where is Mr. Harris physically located?

13 A. He's in New York, Manhattan.

14 Q. And what about Mr. -- is it Froehlich?

15 A. Yeah, I believe so. He is in New Jersey.

16 Q. Who in your view is the person or persons that are
17 most knowledgeable as to the technology used at CBS Radio
18 News to make podcasts available online?

19 A. As far as the technology of the -- of the
20 production of the podcasts, that would be me. In terms
21 of the actual creation of the podcast itself, it would be
22 the Harris Media and Synergy folks that we mentioned.

23 Q. Are there documents that relate to the technology
24 used at CBS Radio News to make podcasts available online?

25 A. Yes.

1 Q. Where would those documents be located?

2 A. New York and New Jersey.

3 Q. Would those include documents both at CBS and at
4 Harris Media and Synergy?

5 A. Yes.

6 Q. Does CBS Radio News have records or information
7 about the extent of usage of the podcasts at CBS Radio
8 News?

9 A. Yes. Synergy, in their code, has also provided us
10 ways to track click-throughs and downloads; so, that data
11 is all in New York.

12 Q. And who would be the person who is most
13 knowledgeable about that information about how the CBS
14 Radio News podcasts are used?

15 A. I would have that knowledge. I look at those
16 numbers on a regular basis.

17 Q. Does CBS Radio News keep financial records
18 relating to the podcasts on CBS Radio News?

19 A. Yes, we do.

20 Q. And who would be the persons most knowledgeable
21 about those financial records?

22 A. I handle the day-to-day operations, and then the
23 budgeting is done through Linda Coombs.

24 Q. And what is Ms. Coombs' position or title?

25 A. She's the operations manager at CBS Radio News.

1 Q. And where is Mr. Coombs located?

2 A. She's also in New York.

3 Q. As part of your job responsibilities, are you
4 aware of those persons who have direct responsibilities
5 relating to the CBS Radio News podcasts?

6 A. I'm sorry. Could you repeat that one more time?

7 Q. Sure. As part of your job responsibilities, are
8 you familiar with the individuals who would have direct
9 job responsibilities relating to the CBS Radio News
10 podcasts?

11 A. Yes.

12 Q. Are any of those individuals located in Texas?

13 A. No.

14 Q. Did you also investigate the location of witnesses
15 and documents relating to cbs.com?

16 A. I did.

17 Q. What did you do to investigate the location of
18 witnesses and documents relating to cbs.com?

19 MR. PITCOCK: Your Honor, objection. He is
20 going to base all of this on again discussions with third
21 parties who are not present, and he has no
22 responsibilities for any of the contents at cbs.com as
23 opposed to these podcasts.

24 THE COURT: All right. Well, I'll -- I will
25 defer a ruling on the objection until we get to specific

1 questions, but at this point she's just asking him what
2 he did. So, I'll allow him to answer that.

3 A. I had conversation with a couple of
4 representatives at cbs.com, and then I also followed up
5 by looking up information about them on our company
6 directory.

7 BY MS. DAVIS:

8 Q. And who were the individuals that you spoke to
9 about the operations of cbs.com?

10 A. A Mr. Randell -- he is the vice-president of
11 engineering for cbs.com -- and an Elizabeth Wright. She
12 is the vice-president of financial planning and analysis
13 for cbs.com.

14 Q. Where is Mr. Randell located?

15 A. He is in --

16 MR. PITCOCK: Objection, hearsay, foundation.

17 THE COURT: He is now being asked about
18 employees of cbs.com. And what is the relationship of
19 cbs.com to his employer?

20 MS. DAVIS: They're both part of the CBS
21 Corporation group of companies, your Honor.

22 MR. PITCOCK: I'll withdraw the objection for
23 now, your Honor.

24 THE COURT: All right. I'll allow him to
25 answer questions about employees of the CBS family.

1 A. I'm sorry. I forgot the question.

2 BY MS. DAVIS:

3 Q. I think I did, too. Why don't I just pick up I
4 think where I left off -- oh. Where is Mr. Randell
5 located?

6 A. In my conversations with him and according to the
7 CBS employee directory, he is in San Francisco.

8 Q. And you also mentioned that you spoke to
9 Ms. Wright?

10 A. That's correct.

11 Q. And where is Ms. Wright located?

12 A. According to my conversation with her and the
13 internal CBS directory, she is in New York.

14 Q. In your conversation with Mr. Randell, did you
15 inquire as to the location of witnesses who would have
16 knowledge with respect to the cbs.com video episodes
17 online?

18 A. I discussed with him the locations of the teams
19 that he works with, not specific individuals.

20 Q. Okay. And what did Mr. Randell inform you as to
21 how -- well, where the teams that work on cbs.com video
22 episodes are located?

23 A. He told me that the majority of the technical
24 people are in San Francisco; and a majority of the
25 business operations are done in New York, which makes

1 sense given where they're -- the individual people are
2 located according to the directory.

3 Q. Did you do any additional investigation to confirm
4 the information that Mr. Randell and Ms. Wright had
5 provided you?

6 A. As I said, I looked them up in the CBS directory
7 and found all of the information that they had given me
8 matched what was in the directory.

9 Q. I think you already talked a little bit about what
10 Mr. Randell's job responsibilities are. Can you tell us
11 what Ms. Wright's job responsibilities are?

12 A. Sure. She handles the analytics in terms of
13 downloads and also making sure that money collected for
14 the cbs.com podcasts is accounted for correctly.

15 Q. Do you have an understanding as to where the sales
16 functions or sales team associated with cbs.com is
17 located?

18 A. Those are in New York, yes.

19 Q. Do you have an understanding as to who the head of
20 the sales team for cbs.com is?

21 A. That's Ken Lagana, according to my conversations
22 and the CBS directory.

23 Q. And where is Mr. Lagana located?

24 A. In New York.

25 Q. And did you have -- do you have an understanding

1 as to where the analytics team is located for cbs.com?

2 A. With Elizabeth Wright in New York.

3 Q. And do you have an understanding as to where the
4 financial team is relating to the cbs.com Web site?

5 A. Also in New York.

6 Q. Did you in your investigation make inquiries as to
7 whether or not there were any potential witnesses about
8 cbs.com video episodes who would be located in Texas?

9 A. I did ask that specifically, and I was told there
10 were none.

11 MS. DAVIS: I have no further questions. I
12 pass the witness.

13 THE COURT: All right. Thank you.

14 CROSS-EXAMINATION OF DUSTIN GERVAIS

15 BY MR. PITCOCK:

16 Q. If you could open your binder to Exhibit 5.

17 A. I am there.

18 Q. And just so your testimony is clear, you're
19 responsible only for certain podcasts. If you look at
20 page 9, starting with *60 Minutes* to *Courtwatch*; is that
21 correct?

22 A. That's correct. That's my direct responsibility.

23 Q. And you have no responsibilities with respect to
24 any of the television episodes that are listed on
25 pages 3, 4, 5, 6, 7, and 8; is that correct?

1 A. Yes. No direct responsibility there.

2 Q. So, your knowledge regarding any of these shows is
3 solely based on your conversations with various people at
4 cbs.com?

5 A. I have some knowledge based on the day-to-day
6 operations of working at CBS.

7 Q. Let me show you what's been previously marked as
8 Exhibit P-2. I think you have it in --

9 A. This one (indicating)?

10 Q. Oh, no. I'm sorry. P-1. I apologize.

11 It's the initial disclosures of CBS.

12 A. Is that in the binder or --

13 Q. It is not in the binder. It should be a
14 stand-alone document just like this one.

15 I'll put it up on the Elmo so you don't need
16 to worry about it.

17 A. Yeah. Thank you. This seems to be 17 so...

18 Q. Now, of all -- so, Mr. Randell, he is the
19 vice-president of engineering in California who has
20 knowledge of the design, development, and operation of
21 the accused infringing Web sites; is that correct?

22 A. That's my understanding.

23 Q. And he leads a development team of over 25 people;
24 is that correct?

25 A. That's my understanding.

1 Q. And the majority of them are located in
2 California?

3 A. Yes, that's my understanding.

4 Q. And he works for CBS Interactive, Inc.; is that
5 correct?

6 A. Yes, that's my understanding.

7 Q. So, you're not that familiar with that part of the
8 CBS corporate umbrella?

9 A. There are very specific different areas of the
10 company. So, sometimes there's a division on how things
11 are divided. So...

12 Q. Was it your understanding that CBS Interactive,
13 Inc., is the part of CBS that runs the cbs.com Web site?

14 A. Could you repeat that one more time?

15 Q. Sure. Is it your understanding that CBS
16 Interactive, Inc., is the part of the CBS corporate
17 family that runs cbs.com?

18 A. Yes, among other Web sites.

19 Q. And, so, all these shows in Exhibit 5 in the
20 binder, you understand that all these shows hosted at
21 cbs.com, they're under the responsibility of CBS
22 Interactive, Inc.?

23 A. That's my understanding. We didn't go through
24 each show, but that's my understanding.

25 Q. And CBS Interactive, Inc., is headquartered in

1 San Francisco?

2 A. Well, like I said, there are some people in
3 San Francisco and some businesspeople in New York.

4 Q. My question was: Is CBS Interactive headquartered
5 in San Francisco?

6 A. I guess I'm differing on what you mean by the term
7 "headquartered."

8 Q. You don't understand that's their main office in
9 California?

10 A. It's not their only office.

11 Q. I didn't say it was their only office. And I
12 don't mean to be argumentative. Do you understand that
13 it's their headquarters or not?

14 A. I'm not sure.

15 Q. So, if you look at the other relevant witnesses
16 who are listed as being part of CBS Interactive, do you
17 know who Joseph Akbrud is?

18 A. Yes. I work with him on a regular basis.

19 Q. Okay. And does he work on the TV shows or the
20 podcasts?

21 A. No, he works at cbsnews.com. So, he would
22 probably -- well, yeah, he works at cbsnews.com.

23 Q. So, you think he works on some of the TV shows?

24 A. Not for -- not the ones that we were talking about
25 on pages 3, 4, 5, 6, et cetera.

1 Q. Do you think he works on the podcasts that are
2 listed on pages 9, 10, and 11?

3 A. No. No. I'm sorry.

4 Q. So, do you have any idea what the relevance of
5 Mr. Akbrud would be to this case?

6 A. He may not work directly on those shows but he may
7 have knowledge of some of the systems that were
8 developed, but I wouldn't -- I don't know that for sure.

9 Q. Now, do you see where Corey Downs is listed?

10 A. I see that here.

11 Q. And do you know his responsibilities at CBS?

12 A. I do not.

13 Q. He wasn't mentioned in respect to any of your
14 conversations?

15 A. No.

16 Q. Do you know that Mr. Downs is located in
17 Los Angeles?

18 A. I don't know that.

19 Q. And you don't know what his responsibility would
20 be with respect to knowledge in the case?

21 A. I do not.

22 Q. And you don't know where his documents would be
23 located?

24 A. I do not.

25 Q. Now, do you remember at your deposition when we

1 discussed the chief technology officer and chief
2 information officer of CBS Interactive?

3 A. Yes, I remember that coming up.

4 Q. And you remember that person being Mr. Yared?

5 A. I remember you showing me some documents saying
6 so.

7 Q. But you don't have any understanding of the chief
8 technology officer of CBS Interactive's role with respect
9 to these Web sites?

10 A. Not specifically.

11 Q. Do you recall seeing that there was information
12 that indicated that he lived in California?

13 A. I recall you showing me information saying that.

14 Q. Did you look him up in the company directory the
15 way you did for some of these other witnesses?

16 A. I did not.

17 Q. And you didn't talk to him before you gave your
18 testimony today?

19 A. No.

20 Q. And would you agree with me that Mr. Randell would
21 be more knowledgeable than yourself regarding the
22 operation of the cbs.com Web site?

23 A. Yes.

24 Q. You had your discussion with Mr. Randell under the
25 direction of counsel; is that correct?

1 A. What do you mean by "under the direction of"?

2 Q. I'm sorry. Was counsel present when you talked to
3 Mr. Randell?

4 A. Yes.

5 Q. And did they participate in that discussion?

6 A. Only to a very limited extent.

7 Q. Now, do you have any reason other than this
8 litigation to have discussions with Mr. Randell?

9 A. I wouldn't think so, but something might come up.

10 Q. So, is it safe to say that you don't have any
11 personal knowledge of the location of the documents
12 associated with Mr. Randell's work?

13 A. In terms of the documents specifically?

14 Q. Yes.

15 A. Only what he told me.

16 Q. Now, who are the ten most knowledgeable witnesses
17 for cbs.com of these teams you have been describing?

18 A. As far as specific names?

19 Q. Yes.

20 A. Other than Mr. Randell and Ms. Wright, I couldn't
21 give you ten.

22 Q. Could you give me a third?

23 A. Joe Akbrud who is listed here who I know may have
24 knowledge as well.

25 Q. But you don't know he has any relevant knowledge,

1 do you, sir?

2 A. Not for sure.

3 Q. And is it safe to say that of these relevant
4 witnesses you have no idea where their relevant documents
5 might be kept?

6 A. I would guess they would be kept where they are
7 located.

8 Q. So, largely in California?

9 A. Or New York.

10 Q. Let me show you a list of people in the same
11 initial disclosures who are listed as being knowledgeable
12 about prior art. And it extends over two pages; so, I'll
13 have to do this in waves. But I want to know if you're
14 familiar with the location of any of them.

15 A. Not that I can see on the screen.

16 Q. Do you have any relevant knowledge regarding any
17 of these prior art witnesses or companies?

18 A. No.

19 Q. I'm going to show you the rest of this list.

20 Does that change your answers?

21 A. No.

22 Q. How about these prior art witnesses (indicating)?
23 Do you know any of them?

24 A. No.

25 Q. Don't know where they're located?

1 A. No.

2 Q. And for all the witnesses listed with respect to
3 prior art, is it safe to say you have no idea where their
4 relevant documents might be?

5 A. I do not, no.

6 Q. Are you familiar with CrunchBase?

7 A. My understanding it's a tech crunch of database of
8 companies.

9 Q. And I want to show you a printout of CrunchBase.
10 Do you see all the people listed there for CBS
11 Interactive?

12 A. I see a list of people, yes.

13 Q. And do you know any of the people listed here for
14 CBS Interactive?

15 A. Personally?

16 Q. Yes.

17 A. No.

18 Q. Is it safe to say that you have no idea where
19 they're located?

20 A. Not on an individual basis, no.

21 Q. And is it safe to say that you have no idea where
22 their documents are kept?

23 A. Not specifically, no.

24 Q. Now, do you know why Mr. Randell isn't here
25 testifying today?

1 A. I do not.

2 Q. Could it be because he's located in California?

3 A. I --

4 MS. DAVIS: Objection, your Honor. Calls for
5 speculation.

6 THE COURT: I'll sustain the objection.

7 BY MR. PITCOCK:

8 Q. And just to be clear, you have no personal
9 knowledge with regard to the sports-related podcasts?

10 A. No.

11 MR. PITCOCK: Nothing, pending redirect, your
12 Honor.

13 THE COURT: All right.

14 REDIRECT EXAMINATION OF DUSTIN GERVAIS

15 BY MS. DAVIS:

16 Q. Mr. Gervais, Mr. Pitcock was asking you some
17 questions about a Mr. Akbrud. Do you recall that?

18 A. Uh-huh. That's correct.

19 Q. Where is Mr. Akbrud located?

20 A. He is in New York.

21 Q. Is it your understanding that Mr. Akbrud works for
22 CBS Interactive?

23 A. Yes.

24 Q. I'm going to call your attention to the document
25 that counsel still has up on the screen, that CrunchBase

1 document. Do you see that?

2 A. I do.

3 Q. And is it -- do you have an understanding as to
4 whether CBS Interactive works on Web sites other than the
5 cbs.com Web site?

6 A. Yes.

7 Q. Do you have an idea of about how many Web sites
8 CBS Interactive has under its umbrella?

9 A. I believe it's about 30.

10 Q. Do you know whether any of the individuals listed
11 on the document that Mr. Pitcock put on the screen from
12 CrunchBase have any direct responsibility or -- let me
13 strike that.

14 Do you know if any of those individuals have
15 any direct knowledge as to the operation of the provision
16 of video episodes on cbs.com?

17 A. As far as these people who are listed here, I
18 don't know whether they do or not.

19 MS. DAVIS: No further questions, your Honor.

20 THE COURT: All right. Thank you. You may
21 step down, Mr. Gervais.

22 THE WITNESS: Thank you, your Honor.

23 MS. DAVIS: May the witness be excused, your
24 Honor?

25 THE COURT: Yes. The witness is excused. And

1 we'll take a recess of about ten minutes.

2 (Recess, 10:55 a.m. to 11:10 a.m.)

3 THE COURT: Ms. Davis and Mr. Lieberman, who
4 is your next witness?

5 MR. LIEBERMAN: Your Honor, CBS calls Mr. J.R.
6 Skaggs.

7 THE COURT: All right.

8 (Oath administered.)

9 DIRECT EXAMINATION OF J.R. SKAGGS

10 CALLED ON BEHALF OF DEFENDANT CBS

11 BY MR. LIEBERMAN:

12 Q. Good morning, Mr. Skaggs.

13 A. Good morning.

14 Q. Could you please tell the court what you do for a
15 living?

16 A. I'm a private investigator.

17 Q. And give us a brief rundown of your educational
18 background.

19 A. I received a Bachelor of Business Administration
20 from The University of Texas in 1984.

21 Q. And before that, where did you go to high school?

22 A. I went to high school in Plainview, Texas.

23 Q. And where do you work out of?

24 A. Where do I work now?

25 Q. Where do you work out of? Where is your office?

1 A. In Houston, Texas.

2 Q. How long have you been a private investigator in
3 Texas?

4 A. Since 1982.

5 Q. Tell us how you first came to be a private
6 investigator.

7 A. I started working part-time as an apprentice for a
8 gentleman by the name of Doug Graham who was an ex-FBI
9 agent who had an investigations company in New Braunfels,
10 Texas. This is while I was attending The University of
11 Texas at Austin.

12 Q. And have you remained a private investigator since
13 graduating from University of Texas at Austin in 1984?

14 A. I have.

15 Q. And are you licensed as a private investigator in
16 Texas?

17 A. Yes.

18 Q. Are you being compensated for your time here
19 today?

20 A. I plan to be. I will be submitting an invoice.

21 Q. For your regular time?

22 A. Yes.

23 Q. Did there come a time in this case where you were
24 asked to conduct an investigation on behalf of CBS and
25 NBC?

1 A. There was.

2 Q. Okay. Directing your attention to the day
3 July 23, 2013, can you tell us what you did in your
4 investigation?

5 A. I drove from Houston to Beaumont, Texas. I went
6 to a business at the address 3827 Phelan Boulevard and
7 observed the business and surroundings, took photographs,
8 and spoke with the owner of the business.

9 Q. And tell us what you observed.

10 A. I observed a business by the name of "PostNet"
11 which I understand to be a nationwide chain of pack and
12 ship and mailbox service businesses.

13 Q. Could you turn to Exhibit 15 in your notebook,
14 please?

15 A. (Complies.)

16 Q. And tell us what Exhibit 15 is.

17 A. The cover page reads "Exhibit B." The following
18 page is a photograph that I took of the front of the
19 PostNet business.

20 Q. And does the photograph fairly and accurately
21 represent the front of the business at 3827 Phelan avenue
22 in Beaumont?

23 A. Yes.

24 MR. LIEBERMAN: I move the admission of
25 Exhibit 15, your Honor.

1 THE COURT: Any objection?

2 MR. WARD: No objection.

3 THE COURT: It is admitted.

4 BY MR. LIEBERMAN:

5 Q. Did you take any photographs inside at that
6 location?

7 A. Yes.

8 Q. Okay. And could you tell us, first, what did you
9 see inside the location when you went inside?

10 A. Immediately inside the door and to the right as
11 you walk in was a bank of mailboxes. Beyond that were
12 some areas where you can prepare packages to be shipped.
13 And toward the rear was a desk with the employees of the
14 business working behind it.

15 Q. And could you turn to Exhibit 14 in your binder,
16 please, and tell us what that is?

17 A. The cover page is marked "Exhibit A." The
18 following page is a photograph I took of the
19 aforementioned bank of mailboxes.

20 Q. And there's some type material in the top
21 right-hand corner of the page. Can you tell us what that
22 is and who put that information there?

23 A. It signifies which particular box is numbered 180.

24 Q. And does this photograph which you took fairly and
25 accurately represent the bank of mailboxes that you saw

1 inside 3827 Phelan avenue?

2 A. Yes.

3 MR. LIEBERMAN: I would move its admission,
4 your Honor.

5 MR. WARD: No objection.

6 THE COURT: It is admitted.

7 BY MR. LIEBERMAN:

8 Q. Did you take any steps, Mr. Skaggs, to see whether
9 Personal Audio had a suite of offices or an office or a
10 room or any physical location at the 3827 Phelan avenue
11 address?

12 A. I spoke with the owner and inquired as to whether
13 there were office suites in that location, to which he
14 said no. I did not specifically mention the name
15 "Personal Audio."

16 Q. Okay. But you actually obtained through your
17 visits and speaking with the owner that there were no
18 suites available in that building?

19 A. That's correct.

20 Q. Now, in your -- in this case you were deposed by
21 Personal Audio; is that correct?

22 A. That's correct.

23 Q. And where were you deposed by Personal Audio?

24 A. In Beaumont, Texas.

25 Q. And do you know whose office it was?

1 A. I'm not sure whose office it was. It did not have
2 any nameplate or any official designation.

3 Q. Could you describe what you saw in the office
4 while you were being deposed there?

5 A. Well, I -- I think "office" would be using the
6 term loosely. It was a small reception area just inside
7 the door from the hallway, and beyond the reception area
8 was a -- somewhat of a conference room with a table that
9 barely fit in the conference room. There appeared to be
10 a temporary wall that had been put up, a modular wall,
11 inside the conference room.

12 Q. Was there a telephone in the conference room, sir?

13 A. I'm not sure. I know that the attorney that
14 presented me for the deposition, Mr. Lea, brought a
15 speakerphone to enable one of the other lawyers to
16 participate by telephone. Also brought a long cord that
17 would have been able to reach any point inside either of
18 the rooms of that office, and he was told that there was
19 not a place to plug that in.

20 Q. Did you observe a landline telephone in that
21 conference room where you were deposed?

22 A. I did not.

23 Q. Now, did something unusual happen during the
24 course of the deposition?

25 A. Yes.

1 Q. Could you tell us about that, please?

2 A. I was told to stand up and walk to the corner just
3 to my right where there were three boxes and was
4 instructed to remove certain items from the boxes and
5 read the lettering thereon.

6 Q. By the way, who was it who was questioning you at
7 that deposition?

8 A. It was Mr. Papool Chaudhari.

9 Q. And did you examine the three boxes as
10 Mr. Chaudhari requested?

11 A. I did.

12 Q. Did he also ask you to read into the record a
13 label that you found on the front page of a document in
14 Box 1?

15 A. Yes, he did.

16 Q. All right. Do you recall exactly word for word
17 what that label said?

18 A. Not exactly. I did see it in my transcript and...

19 MR. LIEBERMAN: Your Honor, if I might show
20 the witness his deposition to refresh his recollection as
21 to what the label said which he read into evidence.

22 THE COURT: All right.

23 BY MR. LIEBERMAN:

24 Q. Mr. Skaggs, if you could turn, please, to page 52
25 of your deposition, starting at about line 6. If you

1 could read the question you were asked and the answer
2 that you gave.

3 A. Yes. It says, "And if you would please remove the
4 paper in that box. Can you pick up the first document
5 that you see -- the first document? Yeah. What's --
6 what's that document labeled?"

7 My response was "Box 1, GC received via
8 Federal Express with a letter from P. Arenz stating to
9 store docs in the Personal Audio space, in parentheses,
10 DTD06/23/09."

11 Q. What did you understand the 06/23/09 to represent?

12 A. It would appear to be a date.

13 Q. June 23rd, 2009?

14 A. Yes, June 23rd, 2009.

15 Q. And did you subsequently learn who P. Arenz was?

16 A. I did.

17 Q. Okay. Who is P. Arenz?

18 A. I learned that he is an attorney for Personal
19 Audio.

20 Q. Okay. Could you turn, please, in your binder to
21 Exhibit 26?

22 A. (Complies.)

23 Q. And tell us what this document is, please.

24 A. It is a case docket for a civil matter before the
25 Eastern District of Texas, Lufkin Division, Case

1 No. 9:09-cv-00111-RC.

2 Q. During the course of your 30-plus years as a
3 private investigator, have you had experience reading
4 docket sheets from federal and state court cases?

5 A. Yes, I have.

6 Q. Okay. Can you tell us the name of the plaintiff
7 and the name of the defendant in this case?

8 A. The name of the plaintiff is Personal Audio, LLC.
9 The first defendant is Apple, Inc.

10 Q. Thank you. If you could turn, please, to the
11 third page of this exhibit.

12 MR. LIEBERMAN: Your Honor, I move this
13 exhibit into evidence.

14 MR. WARD: No objection.

15 THE COURT: All right. D-26 is admitted.

16 BY MR. LIEBERMAN:

17 Q. If you could turn to the third page of D-26 and
18 tell me if you see a Mr. P. Arenz listed here on this
19 document?

20 A. I do. Patrick, middle initial M, last name Arenz,
21 Robins Kaplan Miller & Ciresi.

22 Q. And what city is his office in?

23 A. Minneapolis, Minnesota.

24 Q. And could you look at the first page of this
25 exhibit and tell us on what date this lawsuit was filed

1 by Personal Audio?

2 A. On June 25th, 2009.

3 Q. Using your 30 years of investigative skills and
4 experience, could you help us to understand from the
5 label that you were asked by Mr. Chaudhari to read into
6 the record when you were in Personal Audio's offices,
7 what happened on the date on the label?

8 A. It would reasonably seem that the box from which
9 the label was removed was sent to Mr. Arenz on June 23rd,
10 2009.

11 Q. I'm sorry. Sent "to" Mr. Arenz or "from"
12 Mr. Arenz?

13 A. Well, a letter from him stating that the documents
14 be stored in the Personal Audio space. I would infer
15 that Mr. Arenz instructed for the documents to be sent to
16 Personal Audio's space.

17 Q. And that the documents were sent two days before
18 the lawsuit was filed by Personal Audio against Apple?

19 A. That would be my inference.

20 MR. LIEBERMAN: I have no further questions
21 for the witness at this time.

22 CROSS-EXAMINATION OF J.R. Skaggs

23 BY MR. WARD:

24 Q. Good morning, Mr. Skaggs.

25 A. Good morning.

1 Q. My name is Johnny Ward. We have not met before,
2 have we, sir?

3 A. No, not to my knowledge.

4 Q. And I'll be really brief with you. You know that
5 we offered to let you stay home and just introduce your
6 pictures into evidence if you had wanted to stay home?
7 Did you know that?

8 A. No, I did not.

9 Q. Okay. Now, when you did this investigation and
10 you went and took pictures of the post office box, did
11 you have Mr. Brad Liddle's declaration with you?

12 A. I did not.

13 Q. You did not? Have you ever seen his declaration?

14 A. Not to my knowledge.

15 Q. Okay. So, you wouldn't have known that at the
16 time Personal Audio filed a response to the motion to
17 transfer venue that was filed in this case by CBS, that
18 he identified himself as the only employee of Personal
19 Audio? You didn't know that?

20 A. No.

21 Q. Did your lawyers ever ask you to go investigate
22 whether or not his assertion in his declaration that he
23 worked in Personal Audio's licensing office located in
24 Houston, Texas -- did they ever ask you to go take
25 pictures of that office?

1 A. They did not.

2 Q. Did you know that they had an office in Houston at
3 the time?

4 A. I did not.

5 Q. Now, you office in Houston, correct?

6 A. Yes.

7 Q. And you have been taking direction from lawyers in
8 Washington, DC, correct?

9 A. I don't know at which point you speak of. I was
10 given my directions by another investigative firm in
11 New York.

12 Q. Mr. Yarborough?

13 A. Correct.

14 Q. Okay. Did you have any trouble communicating over
15 the phone, or did y'all have to travel and meet
16 face-to-face to have your conversations?

17 A. You're speaking of Mr. Yarborough and I?

18 Q. Yes, sir.

19 A. Our interaction was by phone and by email.

20 Q. And you were able to email documents and
21 photographs back and forth to each other?

22 A. Yes.

23 Q. Without any trouble?

24 A. Well, I don't recall him sending any to me. It
25 was a one-way stream going from me to him.

1 Q. Were you asked to do any investigation to find out
2 whether or not Personal Audio had been a Texas company
3 since at least 2009?

4 A. I was not.

5 Q. No investigation as to what offices it has?

6 MR. LIEBERMAN: Objection. This is beyond the
7 scope of the direct examination, your Honor.

8 THE COURT: I'll overrule the objection.

9 A. Could you repeat the question?

10 BY MR. WARD:

11 Q. Yeah. Any investigation as to what offices it
12 currently has?

13 A. No.

14 Q. No follow-up that you've done, correct?

15 A. I have done follow-up.

16 Q. But you haven't followed up to see the office in
17 Plano; is that right?

18 A. That's correct.

19 Q. Okay. And have you done any investigation that
20 would enable you to have an opinion one way or the other
21 as to whether or not Personal Audio had paid over \$75,000
22 in taxes -- franchise taxes in 2011-2012?

23 MR. LIEBERMAN: Objection, your Honor. Beyond
24 the scope of direct. This witness was called for a very
25 limited purpose.

1 THE COURT: Well, the subject matter of the
2 direct is the test and the subject matter involved his
3 investigation of the plaintiff's presence in Texas. So,
4 I'll overrule the objection.

5 BY MR. WARD:

6 Q. Did you do any investigation of whether or not
7 Personal Audio had paid over \$75,000 in franchise taxes
8 between 2011 and 2012 in Texas?

9 A. No.

10 Q. Or to determine whether or not it did in fact have
11 over \$2 million in bank accounts in Beaumont in July of
12 2013? Do you have an opinion one way or the other
13 whether or not that factual assertion is accurate?

14 A. I have no --

15 MR. LIEBERMAN: Objection, your Honor. The
16 question is based on facts not in evidence.

17 THE COURT: Obviously I'm not assuming that
18 any of Mr. Ward's questions are factual. They're simply
19 questions as to whether or not this witness has included
20 those in his investigation. So, I'll take them with that
21 limitation; but I'll allow the question.

22 A. Restate, please.

23 BY MR. WARD:

24 Q. Did you do anything to determine whether or not
25 Personal Audio's assertion that it maintained over

1 \$2 million in bank accounts in Beaumont at the time the
2 defendants filed this motion to transfer venue, whether
3 or not that in fact existed or not?

4 A. I have no such knowledge.

5 Q. All right.

6 MR. WARD: No further questions. I'll pass
7 the witness.

8 REDIRECT EXAMINATION OF J.R. Skaggs

9 BY MR. LIEBERMAN:

10 Q. Mr. Skaggs, Mr. Ward asked you on
11 cross-examination if you had seen the Bradley Liddle
12 declaration. If you could turn to Exhibit 7 in your
13 binder.

14 Do you have that in front of you now?

15 A. Yes.

16 Q. Could you just read the title of that document
17 into the record?

18 A. It's the "Declaration of Brad Liddle in Support of
19 Plaintiff's Opposition to Certain Defendants' Motion to
20 Transfer Venue."

21 Q. Directing your attention to paragraph 4 of the
22 declaration, Exhibit 7, could you read the last sentence
23 into the record, please?

24 A. "Personal Audio LLC's principal place of business
25 is located at 3827 Phelan Boulevard, Suite 180, Beaumont,

1 TX 77707 and can be contacted through a local telephone
2 number whose area code is associated with Beaumont,
3 Texas."

4 Q. And just so there's no lack of clarity here, this
5 is the address that you visited during the course of your
6 investigation, correct?

7 A. I visited 3827 Phelan Boulevard, but there's no
8 such Suite 180 at that location.

9 Q. All you found there was Mailbox 180; is that
10 right?

11 A. That's right.

12 Q. Thank you very much.

13 MR. LIEBERMAN: No further questions.

14 MR. WARD: Nothing further.

15 THE COURT: Thank you, Mr. Skaggs. You can
16 step down, and you are excused.

17 THE WITNESS: Thank you.

18 MR. LIEBERMAN: Your Honor, CBS calls as an
19 adverse witness Mr. Brad Liddle, the general counsel and
20 CEO of Personal Audio.

21 (Oath administered.)

22 **

23 **

24 **

25 **

1 DIRECT EXAMINATION OF BRAD LIDDLE

2 CALLED AS AN ADVERSE WITNESS

3 ON BEHALF OF DEFENDANT CBS

4 BY MR. LIEBERMAN:

5 Q. Good morning, Mr. Liddle.

6 A. Good morning.

7 Q. On April 1, 2013, you were hired by Personal Audio
8 as its general counsel, correct?

9 A. That is correct.

10 Q. And at the time you were hired by Personal Audio
11 as its general counsel, you had been an associate for two
12 years at the Houston law firm of Collins Edmonds,
13 correct?

14 A. Yes.

15 Q. So, you were a second-year associate.

16 A. Yes.

17 Q. And at the time you were hired on April 1st, 2013,
18 you were the only employee of Personal Audio, correct?

19 A. That's correct.

20 Q. And you were promoted to CEO as well as general
21 counsel in October of 2013, correct?

22 A. Yes.

23 Q. Now, before becoming CEO, you had had no formal
24 training in the preparation or examination of balance
25 sheets or income statements or profit and loss

1 statements, correct?

2 A. No formal training, correct.

3 Q. And you had never been an executive at any
4 corporation before, correct?

5 A. That's correct.

6 Q. And before becoming general counsel of Personal
7 Audio, you had never yourself negotiated any license
8 agreements; is that correct?

9 A. Not as the lead attorney, no.

10 Q. You were a very junior associate at the firm; and
11 you worked on some matters where other people negotiated
12 license agreements but not you, correct?

13 A. That's correct.

14 Q. And by the way, your compensation as general
15 counsel and CEO includes a percentage of Personal Audio's
16 licensing revenue, correct?

17 A. That's correct.

18 Q. I'd like to turn your attention to a filing made
19 by Personal Audio, the initial disclosures, which you'll
20 see in your binder as Exhibit 4.

21 Do you have that document in front of you?

22 A. Yes.

23 Q. Now, as part of your job as general counsel, you
24 review court filings made on behalf of Personal Audio,
25 correct?

1 A. Yes.

2 Q. And you try to exercise diligence to ensure that
3 the court filings are accurate, correct?

4 A. Yes, of course.

5 Q. All right. If you could look at Exhibit 4,
6 please, which was served on February 14th, 2014 -- that's
7 the right date, correct, February 14th, 2014?

8 A. Are you asking if that's the date of the document?

9 Q. Yes.

10 A. Yes.

11 Q. And directing your attention to pages 1 through 3,
12 you see a list of witnesses identified by Personal Audio
13 as the persons knowledgeable regarding the issues in this
14 case, correct?

15 A. Yes.

16 Q. And the first four people listed, the individuals
17 on page 1, those are the only individuals who are
18 associated with Personal Audio or were in the past
19 associated with Personal Audio, correct?

20 A. Can you rephrase that, please?

21 Q. Sure. The four people listed on page 1, the first
22 four witnesses, those are people who either work for or
23 are shareholders of Personal Audio or people who were
24 associated with Personal Audio in the past, correct?

25 A. That's correct.

1 Q. And the witnesses listed on page 2 and page 3,
2 those are witnesses associated with other entities,
3 correct?

4 A. Correct.

5 Q. So, let's look at the first witness, James Logan.
6 Mr. Logan is the founder of Personal Audio?

7 A. Yes.

8 Q. And he lives in New Hampshire?

9 A. Yes.

10 Q. And you've seen the '504 patent before, correct?

11 A. Yes.

12 Q. On the front page of the '504 patent, Mr. Logan is
13 listed as an inventor, correct?

14 A. Yes.

15 Q. And his address is listed as Candia,
16 New Hampshire, correct?

17 A. Yes.

18 MR. LIEBERMAN: Your Honor, I would move into
19 evidence Defendants' Exhibit 4, the initial disclosures.

20 MR. WARD: No objection.

21 THE COURT: All right. D-4 will be admitted.

22 BY MR. LIEBERMAN:

23 Q. The second witness listed on Personal Audio's
24 initial disclosures is Mr. Charles Call, correct?

25 A. Yes.

1 Q. And Mr. Call lives in North Carolina, correct?

2 A. That is my understanding, yes.

3 Q. And the third witness listed on the initial
4 disclosures for Personal Audio is Daniel Goessling,
5 correct?

6 A. Yes.

7 Q. Mr. Goessling was another inventor of the '504
8 patent, correct?

9 A. Correct.

10 Q. Mr. Logan was one inventor, Mr. Call a second,
11 Mr. Goessling a third, correct?

12 A. Correct.

13 Q. And looking at the face of the '504 patent which
14 you'll find as Exhibit 1 in your binder, at the time the
15 patent application was filed, Mr. Goessling listed his
16 residence as Massachusetts, correct?

17 A. Let me get there.

18 That's correct.

19 Q. And you're aware, sir, that Mr. Goessling
20 currently resides in Massachusetts, correct?

21 A. That is my understanding.

22 Q. And you would agree that the conception of the
23 invention claimed in the '504 patent was not done in
24 Texas, correct?

25 A. I am not sure where it was done.

1 Q. Please answer my question. You will agree that
2 the conception of the invention claimed in the patent was
3 not done in Texas, correct?

4 A. I don't have any personal knowledge of where it
5 was conceived.

6 Q. Do you recall being deposed in this lawsuit, sir?

7 A. Yes.

8 Q. Do you recall taking an oath to tell the truth
9 during the deposition?

10 A. Yes, of course.

11 MR. LIEBERMAN: May I approach the witness,
12 your Honor?

13 THE COURT: Yes.

14 BY MR. LIEBERMAN:

15 Q. I'm showing you a copy of the transcript of your
16 deposition in this lawsuit. Directing your attention to
17 page 76, do you recall being asked this question and
18 giving this answer, starting at line 17:

19 "And none of the inventors did their inventing
20 in Texas, correct?"

21 Answer, "Not to my knowledge"?

22 A. Yeah. I don't have any knowledge. I don't know.

23 Q. Your understanding is that the inventing with
24 respect to the '504 patent was done either in
25 Massachusetts or in New Hampshire, correct?

1 A. It very well could have been, but I don't --

2 Q. That's your understanding, sir, as general counsel
3 and CEO of Personal Audio, correct?

4 MR. WARD: Well, your Honor, if he's going to
5 impeach him, he ought to let him read the very next
6 answer that he gave in response to the same question. He
7 says he doesn't know. "I don't have any knowledge of
8 that."

9 A. I actually say I'm not a hundred percent certain
10 of where it was conceived. I don't know.

11 BY MR. LIEBERMAN:

12 Q. Could you turn to page 77 of your deposition?

13 A. Sure. I'm there.

14 Q. Line 13, do you recall being asked this question
15 and giving this answer:

16 "But you know it was done in either
17 Massachusetts or New Hampshire, correct?"

18 "I don't know that."

19 Question, "That's your understanding?"

20 Answer, "That is my understanding."

21 Do you recall giving that answer to those
22 questions?

23 A. Yes, I do.

24 Q. Okay. And you don't have any basis for believing
25 that the invention claimed in the '504 patent took place

1 in Texas, correct?

2 A. I have no knowledge of that.

3 Q. Now, in the initial disclosures, you are the only
4 one of the four Personal Audio affiliated witnesses who
5 resides in Texas, correct?

6 A. Correct.

7 Q. And you're the only one of the four Personal Audio
8 affiliated witnesses who works in Texas, correct?

9 A. Correct.

10 Q. And you're identified as being knowledgeable
11 concerning the creation, formation, and operation of
12 Personal Audio, correct?

13 A. Correct.

14 Q. But you have no personal knowledge regarding the
15 creation or formation of Personal Audio, correct?

16 A. I -- I've read the corporate papers where the
17 entity was formed.

18 Q. You have no personal knowledge regarding the
19 creation or formation of Personal Audio, correct?

20 A. I've read -- like I said, I've read the corporate
21 papers, the certificate of formation, the operating
22 agreement.

23 Q. But you weren't working for Personal Audio back
24 then. You didn't talk to any of the --

25 A. That's correct.

1 Q. Okay. You're also listed as knowledgeable with
2 respect to the licensing of patents owned by Personal
3 Audio, correct?

4 A. Correct.

5 Q. Since you've arrived at Personal Audio, the '504
6 patent has not been licensed by itself to any entity,
7 correct?

8 A. That's correct.

9 Q. And as we went over a moment ago, before you
10 joined Personal Audio, you yourself had never negotiated
11 any license agreements, correct?

12 A. Correct.

13 Q. Now, turning back to Mr. Goessling, one of the
14 co-inventors, he has not been involved with Personal
15 Audio since 1996, correct?

16 A. That is my understanding.

17 Q. And in another litigation brought by Personal
18 Audio, Mr. Goessling was deposed by Apple; and then
19 Personal Audio filed a motion seeking to prevent the use
20 of that deposition testimony by Apple at the trial,
21 correct?

22 A. Correct.

23 Q. And the testimony that Personal Audio sought to
24 exclude from Mr. Goessling was what Apple characterizes
25 as an admission by Mr. Goessling that this prior patent

1 that was involved in the Apple suit was invalid, correct?

2 A. I don't know what the -- his testimony involved.

3 Q. If you could turn, please, to Exhibit 28 in your
4 binder. Do you recognize that document as "Personal
5 Audio Motion in Limine Number 4" in the *Personal Audio*
6 *versus Apple* case?

7 A. Yes.

8 MR. LIEBERMAN: We would move the admission of
9 Exhibit 28, your Honor.

10 MR. WARD: I don't have any objection, your
11 Honor.

12 THE COURT: All right. Exhibit 28 will be
13 admitted.

14 BY MR. LIEBERMAN:

15 Q. Turning your attention to page 3 of that motion,
16 could you read out loud to the court the second sentence
17 in the first full paragraph on the page?

18 A. I'm sorry. Which sentence?

19 Q. The second sentence in the first full paragraph on
20 the page.

21 A. "Apple has since asserted that Mr. Goessling
22 admitted that the asserted claims are invalid." See
23 example Exhibit B at 50 (reading).

24 Q. Thank you. So, it's fair to say, looking at this
25 document, using your experience as a lawyer, that

1 Personal Audio argued in another case that Mr. Goessling
2 had made critical admissions regarding the invalidity of
3 a Personal Audio patent, correct?

4 THE COURT: Now, Mr. Lieberman, that's not
5 what that says. You know that. It says "Apple has
6 asserted."

7 MR. LIEBERMAN: I'm sorry. I misspoke, your
8 Honor. I apologize.

9 THE COURT: All right.

10 MR. LIEBERMAN: Let me rephrase.

11 THE COURT: Okay.

12 BY MR. LIEBERMAN:

13 Q. What this document is saying is that -- in a
14 Personal Audio brief, that Apple has characterized
15 Mr. Goessling as having admitted in a deposition that
16 this prior Personal Audio patent was invalid, correct?

17 A. I believe that's what Apple has characterized,
18 yes.

19 Q. And you understand that Mr. Goessling's testimony
20 came in by deposition, not by him appearing in person at
21 the trial, correct?

22 A. Yes, I understand that.

23 Q. Okay. Personal Audio has no control over
24 Mr. Goessling. You couldn't make him show up at trial,
25 correct?

1 A. I don't know that.

2 Q. Now, at the time this lawsuit was filed against
3 NBC and CBS on April 12th, 2013, Personal Audio had no
4 physical office anywhere in the Eastern District of
5 Texas, correct?

6 A. That's correct.

7 Q. The only physical space that Personal Audio had in
8 the Eastern District of Texas at that time was a mailbox,
9 correct?

10 A. That's correct.

11 Q. And the mailbox was a couple of inches high and a
12 couple of inches wide and maybe 12 inches deep, correct?

13 A. Yes.

14 Q. And this was Mailbox No. 180 at the PostNet store
15 at 3827 Phelan Boulevard, correct?

16 A. Yes.

17 Q. And we'll come back to the mailbox in a second,
18 but I want to put some focus on other contact that
19 Personal Audio has with the Eastern District of Texas.
20 And you heard Mr. Ward ask Mr. Skaggs some questions
21 about those other locations.

22 A. Okay.

23 Q. Personal Audio now has a lease on three rooms in a
24 building in Plano, Texas, correct?

25 A. Yes.

1 Q. And the lease for those rooms began in November of
2 2013, correct?

3 A. Yes.

4 Q. And that was after the filing of the lawsuit
5 against NBC and CBS, correct?

6 A. Correct.

7 Q. In fact, it was several months after NBC and CBS
8 had filed a motion to transfer at the end of June, 2013,
9 correct?

10 A. Correct.

11 Q. Personal Audio also has two rooms in an office in
12 Beaumont, correct?

13 A. Correct.

14 Q. And that's the office where Mr. Chaudhari took the
15 deposition of Mr. Skaggs?

16 A. Correct.

17 Q. And the office you had heard Mr. Skaggs describe?

18 A. Correct.

19 Q. And those rooms Personal Audio leased beginning in
20 September of 2013, correct?

21 A. Correct.

22 Q. And that was after the lawsuit was filed against
23 NBC and CBS, correct?

24 A. Correct.

25 Q. And it was also after the motion to transfer had

1 been filed, correct?

2 A. Correct.

3 Q. So, to summarize, the only physical space Personal
4 Audio had in the Eastern District of Texas at the time of
5 the filing of the lawsuit was the mailbox which you
6 characterized as its principal place of business at the
7 time, correct?

8 A. Correct.

9 Q. Now, Mr. Ward, when he asked -- when he was
10 questioning Mr. Skaggs, made reference to a Houston
11 location. The Houston location is some space that you
12 got after the lawsuit was filed, correct?

13 A. Correct.

14 Q. So, you didn't have the Houston space at the time
15 the lawsuit was filed.

16 A. That is correct.

17 Q. And that's a space for which you pay two or \$300 a
18 month?

19 A. That's correct.

20 Q. And the space is actually abandoned now. You're
21 not using it, correct?

22 A. No, because I moved to Plano. No, because I
23 opened an office in Plano.

24 Q. Now, in opposition to the motion to transfer, you
25 filed the declaration, Exhibit 7 in your binder, that you

1 heard about during my questioning of Mr. Skaggs, correct?

2 A. Correct.

3 Q. And in this declaration you represented to the
4 court that Personal Audio's principal place of business
5 was located at that Phelan avenue address, correct?

6 A. Correct.

7 Q. And you made reference to the principal place of
8 business being at Suite 180, correct?

9 A. Correct.

10 Q. But in fact there is no room or no office
11 designated as Suite 180 at that address, correct?

12 A. Correct. We called the mailbox a "suite."

13 Q. Well, that's what you called it in your
14 declaration.

15 A. Correct. And in the other filings.

16 Q. That's right. You submitted a declaration to the
17 Massachusetts court calling it a suite also, correct?

18 A. I -- I'm sure I did.

19 Q. Now, you don't dispute that Suite 180 is really
20 just a mailbox, right?

21 A. I do not.

22 Q. And looking at exhibit -- withdrawn.

23 At the time you submitted your declaration to
24 this court representing to the court that Personal
25 Audio's principal place of business was Suite 180 at this

1 address, you had actually been to that location, correct?

2 A. That's correct.

3 Q. So, you knew that what you were referring to as
4 Suite 180 was only a mailbox, correct?

5 A. Correct.

6 Q. And you had been there to, not surprisingly, pick
7 up mail, correct?

8 A. Correct.

9 Q. If you were submitting a declaration to this court
10 today and describing Personal Audio's principal place of
11 business back at the time the lawsuit was filed, would
12 you use that phrase "Suite 180" again?

13 A. Well, that's how we characterized it at the time.
14 That was in the initial complaint that we filed against
15 the other consolidated defendants and that was in the
16 complaint we filed against CBS and NBC and, so, I just
17 went with what the other papers said.

18 Q. Well, let me ask the question this way.

19 A. Sure.

20 Q. Do you agree that referring to this mailbox as the
21 principal place of business of Personal Audio and as
22 being a "suite" was misleading to the court?

23 A. I don't think it was misleading. That's just how
24 we characterized it. If I had to do it again, I would
25 probably just put "Box 180"; but I wasn't around when the

1 original papers were filed.

2 Q. But you were around, obviously, when you signed
3 your declaration.

4 A. Of course.

5 Q. Now, I want to look at another representation that
6 was in that declaration. If you could turn back to
7 Exhibit 7. Take a look at that same sentence in
8 paragraph 4 that makes reference to "Suite 180."

9 You state there that Personal Audio "can be
10 contacted through a local telephone number whose area
11 code is associated with Beaumont, Texas," correct?

12 A. Correct.

13 Q. But at the time you signed this declaration on
14 July 15th, 2013, there was no physical phone anywhere in
15 Beaumont, Texas, that rang when someone dialed that
16 number, correct?

17 A. That's correct.

18 Q. And before July of 2013, when someone called that
19 telephone number with the Beaumont area code, the phone
20 just rolled over to Mr. Richard Baker, correct?

21 A. That's correct.

22 Q. And, in fact, the first time you ever recall
23 receiving a rollover call made to this number was in
24 September, 2013, correct?

25 A. That's correct.

1 Q. And Mr. Baker has his principal offices in
2 Massachusetts, correct?

3 A. Correct.

4 Q. And he resides in Massachusetts, correct?

5 A. Correct.

6 Q. And you've already told us that both the Plano and
7 the Beaumont offices were leased by Personal Audio only
8 after NBC and CBS had filed their motions to transfer,
9 correct?

10 A. Correct.

11 Q. And with respect to those offices, the decision to
12 lease the office wasn't made until after filing the
13 motion to transfer, correct?

14 A. Can you repeat the question?

15 Q. Sure. With respect to those offices, Personal
16 Audio's decision to lease those offices was not made
17 until after NBC and CBS had filed their motion to
18 transfer, correct?

19 A. Well, we were in the process of locating an office
20 in Beaumont at the time the transfer motion was filed.

21 Q. You would agree that with respect to the Plano
22 office the decision to lease an office was made after the
23 filing of the motion to transfer, correct?

24 A. Correct.

25 Q. And with respect to the office space in Beaumont,

1 you don't remember taking any concrete steps of any kind
2 to establish an office in the Eastern District of Texas
3 before the motion to transfer was filed, correct?

4 A. Can you repeat that, please?

5 Q. With respect to the office space in Beaumont, you
6 don't remember taking any concrete steps to establish an
7 office in the Eastern District of Texas before the motion
8 to transfer was filed, correct?

9 A. I don't remember any concrete steps.

10 Q. Now, at the time that you were hired -- withdrawn.
11 You were -- you obtained your job with
12 Personal Audio as a result of answering an advertisement
13 that Personal Audio had placed, correct?

14 A. Yes.

15 Q. And let me show you what has been marked for
16 identification as Defendants' Exhibit 34.

17 MR. LIEBERMAN: May I approach the witness,
18 your Honor?

19 THE COURT: Yes.

20 BY MR. LIEBERMAN:

21 Q. In your deposition you mentioned having responded
22 to an advertisement. That's how you got the job, right?

23 A. That's right.

24 Q. And Exhibit 34 is the advertisement to which you
25 responded, correct?

1 A. It looks like it, yes.

2 MR. LIEBERMAN: Your Honor, we would move the
3 admission of Exhibit 34.

4 MR. WARD: No objection.

5 THE COURT: All right. D-34 is admitted.

6 BY MR. LIEBERMAN:

7 Q. Now, in this advertisement, Personal Audio said
8 that the person who would be hired would be -- help to
9 locate and set up preferably in the Houston area. Do you
10 see that?

11 A. Yes.

12 Q. So, at the time this advertisement went out, as
13 far as you can tell from this ad, there was no
14 contemplation whatsoever of setting up a physical office
15 in the Eastern District of Texas, correct?

16 A. Correct.

17 Q. And by the way, the advertisement says that the
18 person to be hired would be serving as a second chair in
19 licensing discussions. Do you see that?

20 A. Yes, I do.

21 Q. And the first chair would be an experienced senior
22 licensing executive based remotely, correct?

23 A. Correct.

24 Q. And you understood that to be Mr. Richard Baker in
25 Massachusetts, correct?

1 A. I didn't at the time I applied, no; but I do now.

2 Q. And you also understood it when you interviewed
3 with Mr. Baker, correct?

4 A. Yes, I did.

5 Q. And in the requirements for the person applying,
6 you see that it says (reading) a legal postgraduate
7 degree with zero to five years' experience?

8 A. Yes.

9 Q. Before you became general counsel at Personal
10 Audio, you were familiar with the Eastern District of
11 Texas local rules regarding disclosures in patent cases?

12 A. Yes.

13 Q. And if you look at D-5 in the binder. That's
14 "Plaintiff's First Amended Disclosure of Asserted
15 Claims." And if you would turn to page 27 of D-5 *[sic]*.

16 Do you see that there's a discussion there of
17 (reading) documents evidencing the conception, reduction
18 to practice, and development of the claimed invention
19 under Local Rule 3-2(b)?

20 A. What page are we on? I'm sorry.

21 Q. Page 27.

22 MR. WARD: I think you meant Exhibit 6.
23 You've got him in 5.

24 MR. LIEBERMAN: Oh, I'm sorry. I apologize.

25 **

1 BY MR. LIEBERMAN:

2 Q. If you could turn to Exhibit 6, please.

3 MR. LIEBERMAN: Thank you, Mr. Ward.

4 BY MR. LIEBERMAN:

5 Q. Do you see the reference on page 27 in Exhibit 6
6 to Rule 3-2(b) documents?

7 A. Yes.

8 Q. And nowhere in that response do you indicate that
9 the conception and reduction to practice documents were
10 located in the Eastern District of Texas, correct?

11 A. That's correct.

12 Q. Now, in the next section, Rule 3-2(c), you advise
13 that a copy of the file history is available for
14 inspection and copying upon reasonable request at
15 Suite 180, correct?

16 A. Correct.

17 Q. Now, the file history really wasn't in the
18 mailbox, right?

19 A. No, but we could have made it available for
20 inspection and copying upon request. That's what we
21 stated.

22 Q. Well, what you state is it's "available for
23 inspection and copying upon reasonable request at"; and
24 you list Suite 180, correct?

25 A. Correct.

1 Q. And that implies and suggests that the documents
2 could be inspected at Suite 180, correct?

3 A. Correct.

4 Q. And in fact you knew that that was not correct.

5 A. Correct. But we could have made them available
6 for inspection and copying upon request.

7 Q. Now, going back to the conception and reduction to
8 practice documents, you heard Mr. Skaggs' testimony about
9 that -- the copy of the page that was in Box 1 of the
10 documents that he was shown in the Personal Audio office?

11 A. Yes.

12 Q. And those are the original conception and
13 reduction to practice documents?

14 A. Yes, I believe so.

15 Q. And you agree that those original conception and
16 reduction to practice documents were originally located
17 with Mr. Arenz at the Robins Kaplan offices in Minnesota
18 and were sent at Mr. Arenz's request, two days before the
19 lawsuit was filed against Apple, to the Eastern District
20 of Texas, correct?

21 A. I'm aware of that now. I had no knowledge of that
22 before I heard the testimony.

23 Q. But you don't dispute that fact?

24 A. I don't. I have no knowledge of it.

25 Q. Personal Audio was owned by Mr. Logan and Mr. Call

1 and two family trusts owned by Mr. Logan, correct?

2 A. That's correct.

3 Q. And none of the owners of Personal Audio reside in
4 the Eastern District of Texas, correct?

5 A. That's correct.

6 Q. And none of them reside in Texas at all, correct?

7 A. That's correct.

8 Q. And the decision to sue NBC and CBS, that decision
9 was made at least in part by Mr. Baker who resides in
10 Massachusetts, correct?

11 A. That is correct.

12 Q. And as CEO of Personal Audio, you report to
13 Mr. Logan in New Hampshire every couple of weeks,
14 correct?

15 A. That is correct.

16 MR. LIEBERMAN: I pass the witness, your
17 Honor.

18 THE COURT: Mr. Ward, we are basically at noon
19 now. If you think you have just a few minutes with
20 Mr. Liddle, I'll let you go now so we can finish up; but
21 if you're going to require more than a few minutes, I'll
22 break.

23 MR. WARD: It's always dangerous to tell the
24 court that it's just going to be a few. I think the
25 better decision is to wait until after lunch. I don't

1 think it will be long. I'm anticipating about 15
2 minutes.

3 THE COURT: All right. Well, then we'll take
4 a recess until 1:00 o'clock. Thank you.

5 (Recess, 12:01 p.m. to 1:08 p.m.)

6 MR. LIEBERMAN: Your Honor, we just wanted to
7 apprise the court that NBC's corporate designee, Mr. Ted
8 McConville, is in the courtroom. Since this witness is
9 joined for both hearings, we thought it was appropriate;
10 but if the court has an objection, of course we'll ask
11 him to step outside.

12 THE COURT: He's not going to be called or
13 offered in connection with CBS?

14 MR. LIEBERMAN: He will not, your Honor.

15 THE COURT: Then that's fine.

16 MR. LIEBERMAN: Thank you, your Honor.

17 THE COURT: He will be allowed to remain in
18 the courtroom as the corporate designee of NBC.

19 MR. WARD: May we proceed, your Honor?

20 THE COURT: You may. Do I understand that the
21 movant has completed their presentation? Is that -- I
22 know we left off with the end of your last witness,
23 Mr. Liddle. And do you have any further witnesses?

24 MR. LIEBERMAN: We have no further witnesses.
25 Of course, we may have redirect after Mr. Ward has

1 crossed Mr. Liddle.

2 THE COURT: Oh, Mr. Liddle is still
3 testifying. I'm sorry. I forgot that.

4 MR. LIEBERMAN: And then subject to how your
5 Honor wishes to proceed, I do have some closing remarks
6 at some point that are very brief I would like to
7 deliver. I don't know if your Honor would want it after
8 CBS or after the entire --

9 THE COURT: That's fine. I'm sorry. I jumped
10 ahead. When I saw Mr. Ward, I was thinking he was
11 starting his side.

12 In any event, Mr. Liddle, I will remind you
13 that your testimony is under the same oath you took this
14 morning.

15 MR. LIDDLE: Yes, your Honor.

16 THE COURT: Go ahead.

17 CROSS-EXAMINATION OF BRAD LIDDLE

18 BY MR. WARD:

19 Q. Good afternoon, Mr. Liddle. Do you understand
20 what the purpose is of our hearing today?

21 A. Yes, I do. I understand the purpose of the
22 hearing is for Defendants CBS and NBC to show that it's
23 clearly more convenient to litigate the case in the
24 Southern District of New York.

25 Q. There's been no allegation that venue is improper,

1 correct?

2 A. Not that I'm aware of.

3 Q. Now, let's start off with a little bit of
4 background that I don't think we got from your
5 cross-examination by Mr. Lieberman.

6 Are you a resident in Texas?

7 A. I am, yes.

8 Q. Do you have a family here?

9 A. I do, yes.

10 Q. And tell us about your family.

11 A. I have a wife and two children; and we live in
12 Allen, Texas.

13 Q. And is that within the Eastern District of Texas?

14 A. Yes.

15 Q. In Collin County?

16 A. Yes, that's correct.

17 Q. And are you licensed to practice law in the State
18 of Texas?

19 A. I am, yes.

20 Q. And how long have you been licensed to practice
21 here?

22 A. Since November, 2010.

23 Q. And are you also a licensed attorney with the
24 Patent and Trademark Office?

25 A. I am, yes.

1 Q. And how long have you been licensed with the
2 Patent and Trademark Office?

3 A. Since March of 2013.

4 Q. All right. Now, prior to working for Personal
5 Audio, you told us about your work for the Collins
6 Edmonds firm in Houston; is that right?

7 A. That's right.

8 Q. And you were living in Houston at the time you
9 answered the advertisement from Personal Audio?

10 A. That's correct.

11 Q. And you had an interview. Who did you interview
12 with?

13 A. I interviewed with Richard Baker and Jim Logan.

14 Q. And after that interview were you ultimately
15 offered the job?

16 A. I was, yes.

17 Q. And tell us, was it an increase in pay, a decrease
18 in pay to go from Collins Edmonds to Personal Audio?

19 A. It was an increase in pay.

20 Q. And what was your starting salary when you started
21 working for Personal Audio?

22 A. It was \$140,000 per year.

23 Q. Any benefits on top of that?

24 A. No.

25 Q. All right. What about -- there was a reference to

1 some percentage that you might receive out of any
2 recovery. What percentage interest do you have in any
3 recoveries?

4 A. 1 percent.

5 Q. You referenced Mr. Logan and Mr. Call. Those are
6 actually the inventors on the '504 patent which is the
7 patent-in-suit, correct?

8 A. That's correct.

9 Q. And what's your understanding of why they set
10 Personal Audio up? Why was it formed?

11 MR. LIEBERMAN: Objection, your Honor. Lack
12 of foundation. He wasn't working for the company at the
13 time. He'd have no idea.

14 THE COURT: I'll overrule the objection. He
15 is testifying about his company's history. I think that,
16 much like the witnesses called by CBS, is within the
17 scope of personal knowledge. I'll overrule that.

18 A. My understanding was in 2009 the company was
19 formed in order to monetize the patents that they had.

20 BY MR. WARD:

21 Q. And was that a part of your job responsibilities
22 as well when you were hired as general counsel, to assist
23 in licensing the patents -- not just the patent-in-suit
24 but the other patents that are in Personal Audio's
25 portfolio?

1 A. That's correct.

2 Q. And when you were hired by Personal Audio, did
3 they in fact pay for office space in Texas for you to
4 work out of?

5 A. Yes. When I was hired, I was instructed to locate
6 Personal Audio's office in Houston, Texas, which they
7 paid for.

8 Q. And were you living in Houston, Texas, at that
9 time?

10 A. I was, yes.

11 Q. And with your wife and maybe one child?

12 A. That's right, yeah.

13 Q. You've had another one since that time; is that
14 right?

15 A. That's correct.

16 Q. And I know that at the time that you signed your
17 declaration, you were the sole employee of Personal
18 Audio; is that right?

19 A. That's right.

20 Q. And you made that assertion in your declaration;
21 is that right?

22 A. Yes, sir, that's right.

23 Q. And you also identified this office space in
24 Houston; is that right?

25 MR. LIEBERMAN: Objection, leading, your

1 Honor. This is Mr. Ward's witness.

2 THE COURT: All right. I'll sustain the
3 objection.

4 BY MR. WARD:

5 Q. Did you identify any office space in your
6 declaration?

7 A. I did, yes.

8 Q. And where was that office space located?

9 A. It was in Houston, Texas.

10 Q. All right. Tell the court about your job
11 responsibilities at the time you were hired and whether
12 or not they've grown.

13 A. At the time I was hired, I was hired as the
14 general counsel; and my job responsibilities were to
15 oversee the litigation and assist with the licensing
16 program.

17 Q. And are there a number of lawsuits pending between
18 Beaumont and in the Marshall Division as well?

19 A. There are, yes.

20 Q. In managing those lawsuits, do you manage
21 different law firms?

22 MR. LIEBERMAN: Objection, leading, your
23 Honor.

24 MR. WARD: Your Honor, I asked him if he
25 managed law firms.

1 THE COURT: Overruled.

2 A. I do manage several law firms.

3 BY MR. WARD:

4 Q. And is this your sole source of income, or do you
5 have other jobs that you're working on?

6 A. This is my sole source of income.

7 Q. And do you stay busy in this job?

8 A. Yes, I do.

9 Q. Have you stayed busy in the job since you started?

10 A. I have, yes.

11 Q. Is it what I consider a 40- to 60-hour workweek
12 or --

13 A. Yeah, that would be a good summary, yes.

14 Q. And have your responsibilities changed since you
15 started?

16 A. They have, yes. When I was promoted to CEO of the
17 company, I took over running the entire licensing
18 program. I'm also managing the patent portfolio and
19 still overseeing the litigation efforts.

20 Q. And have you in fact entered into any license
21 agreements since you've been working as Personal Audio's
22 general counsel?

23 A. I have, yes.

24 Q. And I guess -- is it just the '504 patent, or
25 would it be for the entire portfolio of Personal Audio's

1 patents?

2 A. They were for the entire portfolio of patents.

3 Q. And do you have any plans to leave this job
4 currently?

5 A. I do not.

6 Q. Are there other employees now that work for
7 Personal Audio?

8 A. There are, yes.

9 Q. And how many employees does Personal Audio have
10 part-time or full-time?

11 A. We have about six that I manage.

12 Q. And identify who those employees are and where
13 they're located.

14 A. Sure. So, we have -- in Plano, Texas, Adam Reed
15 and Eric Carr. In Houston, Texas, we have a young lady
16 named Fei Ji. In Massachusetts we have an employee named
17 Richard Baker, although he's a consultant; he's not an
18 actual employee. And then we have a Dan Henry who is
19 located in New Jersey.

20 Q. Okay. There was also --

21 A. And --

22 Q. -- a reference to a trial in Beaumont involving
23 Apple. Do you recall that?

24 A. Yes, I do.

25 Q. And do you know whether Apple challenged the

1 validity of the patent in that case?

2 A. Yes, they did. They challenged it during the
3 litigation, and they also put the patent into reexam.

4 Q. All right. And from reviewing CBS and NBC's
5 motion to transfer venue, do you know whether or not they
6 are alleging that this forum is inconvenient to any of
7 the witnesses associated with their invalidity defense?

8 MR. LIEBERMAN: Objection, your Honor. This
9 isn't to elicit any fact testimony. This is making a
10 legal argument to the court.

11 THE COURT: I'll overrule the objection. Go
12 ahead.

13 A. Can you restate that, please?

14 BY MR. WARD:

15 Q. Sure. Are you aware of any witnesses that the
16 defendants have identified with respect to any invalidity
17 defense that would be inconvenienced by a trial in the
18 Eastern District of Texas?

19 A. I have not, no.

20 Q. Do you know whether they have conceded that the
21 '504 is valid?

22 A. I do not know.

23 Q. Now, there were some statements in your
24 declaration about taxes paid in Texas. Has Personal
25 Audio paid franchise taxes in the State of Texas?

1 A. Yes.

2 Q. And approximately how much have they paid, to your
3 knowledge, since the company was formed in 2009?

4 A. I'm only aware of the payments in 2011 and 2012;
5 and those are approximately \$80,000.

6 Q. All right.

7 MR. WARD: Your Honor, that's all I have. I
8 pass the witness.

9 THE COURT: All right.

10 REDIRECT EXAMINATION OF BRAD LIDDLE

11 BY MR. LIEBERMAN:

12 Q. Mr. Ward asked you some questions about other
13 employees of Personal Audio.

14 A. Correct.

15 Q. And you made reference to a Mr. Reed and a
16 Mr. Carr, correct?

17 A. Correct.

18 Q. Both Mr. Reed and Mr. Carr were hired after the
19 motion to transfer was filed, correct?

20 A. That's correct.

21 Q. And you also made reference to an employee -- I
22 didn't hear the name -- another employee in the Eastern
23 District. What was that person's name?

24 A. Are you speaking of Fei Ji?

25 Q. That's it.

1 A. Yes.

2 Q. When was that person hired?

3 A. She was hired -- I don't recall the exact date.

4 Q. But it was after the motion to transfer was filed,
5 correct?

6 A. I don't know. I don't recall.

7 Q. You don't recall her being hired before June 28th,
8 2013, do you?

9 A. I don't. I don't recall.

10 Q. Just so we're clear about what you don't recall,
11 you were the person who hired her, correct?

12 A. I am. I can't remember the exact date that I
13 hired her. I don't want to --

14 Q. And you can't tell this court that she was hired
15 before the motion to transfer was filed, correct?

16 A. I don't remember when she was hired.

17 Q. You do remember she was hired after the lawsuit
18 was brought against NBC and CBS, correct?

19 A. That's correct.

20 Q. Now, Mr. Reed and Mr. Carr work 10 to 15 hours a
21 week and get paid \$13 an hour; is that right?

22 A. Yes, that's right.

23 Q. And Fei Ji -- did I pronounce the name right?

24 A. It's Fei, F-E-I.

25 Q. Fei.

1 A. Yes.

2 Q. She is also a temporary employee?

3 A. Yes, she is.

4 Q. And she gets paid \$15 an hour?

5 A. It's either 13 or 15. I can't remember.

6 Q. So, all the employees in the Eastern District of
7 Texas were hired after the motion to transfer was filed
8 with the exception of Fei, as to whom you can't remember
9 when that person was hired but you know it was after the
10 lawsuit was filed, correct?

11 A. That's correct.

12 Q. Now, Mr. Ward asked you some questions about your
13 job responsibilities; and you talked about your
14 promotion. You also talked about Mr. Baker who you said
15 was a contract employee.

16 A. That's right.

17 Q. In fact, since you've become general counsel,
18 Personal Audio has repeatedly represented to the world
19 that Mr. Baker is vice-president of licensing for
20 Personal Audio, correct?

21 A. That's correct.

22 Q. And has done so in press releases that you have
23 reviewed and approved as CEO of Personal Audio, correct?

24 A. That's correct.

25 Q. And if you look at Exhibit 10 in your binder,

1 that's a press release that Personal Audio issued on
2 April 12th, 2013, announcing the lawsuits against NBC and
3 CBS, correct?

4 A. That's correct.

5 MR. LIEBERMAN: We would move Exhibit 10 into
6 evidence, your Honor.

7 MR. WARD: No objection.

8 THE COURT: All right. D-10 is admitted.

9 BY MR. LIEBERMAN:

10 Q. And in that press release -- which by the way --
11 withdrawn.

12 In that press release, you describe in the
13 text of the press release Richard Baker as the
14 vice-president of licensing, correct?

15 A. Correct.

16 Q. And people with questions are referred to
17 Mr. Baker, at the very end of the press release, for more
18 information, correct?

19 A. Correct.

20 Q. They're not referred to you, correct?

21 A. I -- I would say so, yes.

22 Q. In fact, you're not mentioned at all in this press
23 release.

24 A. I am not.

25 Q. And just so that we're clear because your

1 testimony was awhile ago this morning, Mr. Baker is
2 located in Massachusetts, correct?

3 A. That's correct.

4 Q. When you were hired, you were interviewed by
5 Mr. Baker who lives in Massachusetts and Mr. Logan who
6 lives in New Hampshire, correct?

7 A. That's correct.

8 Q. Mr. Ward asked you about certain licenses that
9 Personal Audio had granted. You'll agree with me that
10 Personal Audio has not granted any licenses -- has not
11 obtained any licensees with respect to the '504 patent
12 alone, correct?

13 A. That's correct.

14 Q. That is, any settlements, any licenses that
15 Personal Audio has done have related to a basket of
16 patents, including the patents that were asserted against
17 Apple but which are not being asserted against NBC and
18 CBS, correct?

19 A. That's correct.

20 Q. Now, Mr. Ward asked you about the various
21 witnesses that have been identified on the issue of
22 invalidity. Have you tried to contact or speak to any of
23 those witnesses?

24 A. I have not.

25 Q. So, you don't have any personal knowledge as to

1 where those witnesses are, correct?

2 A. I do not.

3 Q. Have you tried to talk to Mr. Goessling?

4 A. Have I personally tried to talk to Mr. Goessling?

5 Q. Yes.

6 A. I have not.

7 Q. Do you know of anybody at Personal Audio who has
8 tried to talk to Mr. Goessling about the '504 patent?

9 MR. WARD: Your Honor, I object. Any
10 knowledge he has of which witnesses have been contacted
11 would be attorney-client privilege in his capacity as
12 counsel for Personal Audio.

13 THE COURT: I'll say that he can refrain from
14 testifying regarding any evidence he's gotten from
15 counsel.

16 MR. WARD: All right.

17 THE COURT: Or any knowledge he's gotten from
18 counsel.

19 MR. WARD: And, your Honor, just to point out,
20 he is also general counsel for Personal Audio. So, steps
21 he's taken in connection with the litigation, I'd just
22 caution the witness not to reveal any investigation or
23 steps to that -- that involve the litigation.

24 THE COURT: All right.

25 **

1 BY MR. LIEBERMAN:

2 Q. Mr. Liddle, you understand that Mr. Goessling, an
3 inventor of the '504 patent, gave testimony which at
4 least Apple characterized as being extremely adverse to
5 Personal Audio's position in an earlier litigation,
6 correct?

7 A. I don't know what his exact testimony was.

8 THE COURT: Well, I -- Mr. Lieberman, I think
9 the only issue here relates to where Mr. Goessling may
10 be; and the nature of his testimony, what it might be
11 about, I think is something that has no relevance to this
12 venue hearing. So, given his role with the company, I'll
13 ask you to limit your questions to his location.

14 BY MR. LIEBERMAN:

15 Q. As we went over this morning, Mr. Goessling is, to
16 the best of your understanding, living in Massachusetts
17 now, correct?

18 A. Yes.

19 Q. And you don't have any control over Mr. Goessling?

20 A. I do not.

21 Q. And Personal Audio doesn't as far as you know?

22 A. As far as I know.

23 MR. LIEBERMAN: I have no further questions,
24 your Honor.

25 MR. WARD: One, your Honor.

1 THE COURT: If it relates to a new matter that
2 came up on redirect.

3 MR. WARD: It does. It relates to
4 Mr. Goessling.

5 THE COURT: All right.

6 RECROSS-EXAMINATION OF BRAD LIDDLE

7 BY MR. WARD:

8 Q. Mr. Lieberman characterized this testimony as
9 damaging to Personal Audio, correct?

10 A. Correct.

11 Q. Do you know what the finding was in that case in
12 Beaumont, whether the patent was held to be valid or
13 invalid?

14 A. All claims were held valid and infringed.

15 MR. WARD: Nothing further.

16 THE COURT: All right. Thank you. You may
17 step down.

18 THE WITNESS: Thank you, your Honor.

19 MR. LIEBERMAN: Your Honor, CBS has no further
20 witnesses.

21 THE COURT: All right. Very well. Thank you.
22 Mr. Ward and Mr. Pitcock?

23 MR. WARD: Personal Audio has no witnesses
24 that it's going to call.

25 THE COURT: Okay. Very good. Then obviously

1 I have the briefs that have been filed already, and I
2 know that there is a memorandum that CBS has offered. Is
3 there any request to submit any further briefing on the
4 venue issue?

5 MR. PITCOCK: I'm sorry, your Honor. We just
6 got this memorandum today, and I have not had a chance to
7 review it. So, we'd like to reserve the right to respond
8 to it if the court is going to take it under submission.

9 THE COURT: All right. That's reasonable
10 under the circumstances, and we'll figure out a time
11 frame for that.

12 Mr. Lieberman?

13 MR. LIEBERMAN: Your Honor, the memorandum was
14 submitted this morning simply as excerpts from various
15 cases. There's no legal argument in it. And as you
16 know, from the perspective of NBC and CBS, there's
17 considerable time sensitivity in this matter because of
18 activities that are coming up in the case. We would ask
19 if either at this point or after the evidence is
20 presented with respect to NBC, that we be able to make a
21 brief oral presentation to your Honor on issues that we
22 think are particularly pertinent in light of the evidence
23 that's come out.

24 THE COURT: Mr. Ward?

25 MR. WARD: Your Honor, we got it this morning.

1 I think we could have you a response, if we think there's
2 any response necessary, by -- what's today -- by
3 Wednesday at noon.

4 THE COURT: All right. I think that's
5 reasonable. I'll say that, then.

6 And, Mr. Lieberman, if time permits today
7 after we finish the second hearing, I'll be happy to
8 allow you time to make any oral remarks you want to make.

9 MR. LIEBERMAN: Thank you, your Honor.

10 THE COURT: Okay. Then we can proceed at this
11 time with the hearing in the NBC matter.

12 MR. LIEBERMAN: Your Honor, NBC calls as its
13 first witness Mr. Rob O'Keefe.

14 (Oath administered.)

15 DIRECT EXAMINATION OF ROBERT O'KEEFE

16 CALLED ON BEHALF OF DEFENDANT NBC

17 BY MR. LIEBERMAN:

18 Q. Good morning. Would you tell the court your full
19 name.

20 A. Robert Joseph O'Keefe.

21 Q. And by whom are you employed?

22 A. NBCUniversal.

23 Q. How long have you been at NBC, Mr. O'Keefe?

24 A. I've been at NBC for 14 years and the parent
25 company altogether 17 years.

1 Q. Can you give us a brief overview of your
2 educational background?

3 A. Sure. I graduated St. John's University. I
4 graduated with a computer science degree in 1996.

5 Q. What is your current title at NBC?

6 A. I'm director of digital video solutions.

7 Q. And where is your office?

8 A. We're located in New York at 5 Times Square.

9 Q. Where do you currently reside?

10 A. I live in New Jersey.

11 Q. Can you tell us a little bit about yourself, your
12 family?

13 A. Sure. I've been married to my wife for 16 years.
14 We have three sons. I come from a rather large family
15 myself. I'm one of seven. Most of them are in the civil
16 service. I have a brother who is a firefighter, another
17 brother who is in the Secret Service, and actually I have
18 a sister studying to be a court reporter.

19 Q. Thank you. And what does your wife do for a
20 living?

21 A. She is a teacher.

22 Q. Could you tell the court what your job
23 responsibilities are as director of digital video
24 solutions at NBC?

25 A. Yes. My team is centrally located inside the NBC

1 company. We provide video services for all of our
2 networks, all of our brands. And by that I mean the
3 provisioning of video content, the distribution of the
4 content, and the playback of that content through our
5 systems.

6 Q. Can you tell the court what you mean by you and
7 your team providing a centralized service for all the
8 different brands?

9 A. Sure. Video publishing is a complicated process
10 and each of the brands in their day-to-day support of
11 their Web sites require this, but they don't necessarily
12 have the wherewithal to be able to support it themselves.
13 So, we centralize that function within my group; and we
14 provide the expertise on that.

15 Q. Can you give a few examples of brands you would
16 support?

17 A. Sure. Bravo; Oxygen; USA Network; NBC the
18 broadcast network; Telemundo, another broadcast network
19 for Spanish language. We support each of those brands
20 with their video services.

21 Q. And can you describe your and your team's
22 responsibilities with respect to the technology at issue
23 in this case for making TV shows available on the
24 Internet?

25 A. Yes. My team is the -- I guess the key decision

1 maker in terms of what technologies we're going to use,
2 how they're going to be implemented, how we use them to
3 support different other activities inside our
4 organization, like how we monetize them and measure that
5 content; and we act as subject matter experts to the
6 brands on these topics.

7 Q. You mentioned your team. How many people are on
8 your team?

9 A. Currently there's 38 people on my team. That
10 fluctuates from time to time, but it stays steady. So,
11 it's somewhere in the mid 30s.

12 Q. And have you prepared a list of those team
13 members?

14 A. I have prepared a list, yes.

15 Q. And could you turn to Exhibit 31 in your binder,
16 please?

17 Tell the court what this document is.

18 MR. PITCOCK: Your Honor, objection. Again
19 this is a list that has never been produced to us. We've
20 never seen it. We didn't have a chance to review it
21 prior to this witness' deposition, and we don't think it
22 should be part of the record.

23 MR. LIEBERMAN: Your Honor, Mr. Pitcock
24 questioned the witness at his deposition about the
25 identity of his team members. Because it's a little

1 difficult to remember the names of all 38 members of the
2 team, we thought it would be helpful to the court and to
3 everybody in this proceeding if the witness put together
4 a list of the names of the individuals and where those
5 individuals reside and work. We've done this for the
6 benefit of the court. It was prepared with the witness'
7 personal knowledge. These are people he supervises; so,
8 there's no issue there. And of course we could always
9 use the document simply to refresh the witness'
10 recollection.

11 THE COURT: Were these witnesses all testified
12 about during the deposition?

13 MR. PITCOCK: No, your Honor. We didn't know
14 about some of them because we never received this list
15 before. It would have been nice to have had it before
16 the deposition so we could have.

17 MR. LIEBERMAN: Mr. Pitcock was free to ask
18 about everybody on the witness' team. He did, and he
19 identified the names of various management employees. He
20 didn't ask the names of all the people on the team.

21 MR. PITCOCK: I certainly could have if I had
22 been given this list before his deposition.

23 MR. LIEBERMAN: This is not a document that
24 should be extremely useful to the court.

25 THE COURT: You know, given that -- with the

1 representation that this is just a listing of the
2 witnesses and where they -- well, is it where they reside
3 or where they work?

4 THE WITNESS: It's where they work, your
5 Honor.

6 THE COURT: I'll allow it to be introduced for
7 that purpose.

8 And you may cross-examine about the list
9 afterwards.

10 MR. LIEBERMAN: Thank you, your Honor.

11 BY MR. LIEBERMAN:

12 Q. Looking at Defendants' Exhibit 31 in evidence,
13 could you tell the court what this document is and how
14 you came about to prepare it?

15 A. Sure. This is a list of the members of my team.
16 It includes the management folks, the developers, the
17 quality assurance resources. I put it together just to
18 be able to articulate exactly who is on my team and where
19 they work from.

20 Q. Out of the 38 individuals on the list, how many of
21 them work in New York?

22 A. I think the number was 27.

23 Q. And are there any individuals on your team in
24 Texas?

25 A. There is.

1 Q. Who is that?

2 A. Harish Patel.

3 Q. And where does he live?

4 A. He resides north of Dallas.

5 Q. And what is his role?

6 A. Harish is an iteration manager on my team. And by
7 that I mean he really just runs -- he's a coordinator.
8 He sets up meetings and facilitates note taking.

9 Q. Please describe how your team operates.

10 A. My team, it operates -- I guess I have a director
11 of solution delivery -- her name is Hristina Galabova --
12 and then I have two managers. One is Sameer Arya; he
13 heads up my player and services team. The other is
14 Ashwin Katta; he heads up my TV Everywhere experience
15 team. Between the three of them, they provide direction
16 to all the developers and the QA resources to support, in
17 Sameer's case, the creation of the player and the video
18 content management system for the publishing,
19 distribution, and playback of video; in the case of
20 Ashwin, he supports the actual -- building the
21 experiences that expose that content.

22 Q. And where do these individuals work?

23 A. They all reside and work -- I'm sorry. I
24 shouldn't say -- they all work in New York.

25 Q. And as far as you know, do they all reside in the

1 New York area?

2 A. Hristina and Sameer live in New York. Ashwin
3 lives in New Jersey.

4 Q. Could you turn, please, in your binder to
5 Defendants' Exhibit 5 in evidence, which is the first
6 amended infringement contentions?

7 I may have misstated. Exhibit 5 is
8 "Plaintiff's First Amended Disclosure of Asserted Claims
9 and Infringement Contentions." Do you have that there?

10 Well -- okay. If you could look, please, at
11 Exhibit 6.

12 A. Yes.

13 Q. This is the plaintiff's first amended infringement
14 contentions for NBC. I'd like you to -- have you seen
15 this document before?

16 A. Yes, I have.

17 Q. I'd like you to turn to pages 3 to 17 of this
18 document. And I ask you whether you recognize pages 3
19 through 17.

20 A. I do.

21 Q. And what role do you and your team provide with
22 respect to the technology for making the nbc.com TV shows
23 listed on pages 3 through 6 available online?

24 A. Well, with regard to nbc.com, my team is solely
25 responsible for the video content management system

1 player and capability to produce those episodes for
2 online consumption.

3 Q. And what technology do you use to make the full
4 episodes available online at nbc.com?

5 A. As of mid-January we transitioned into a new
6 platform. Just to be clear, the name of the company --
7 it's a third-party service -- it's also called
8 "thePlatform." But prior to managing their solution on
9 thePlatform, we provided a homegrown solution -- it was
10 called the "video content management system" -- and the
11 host of that player. My team built that in-house and
12 supported it out of our offices in New York.

13 Q. And where is thePlatform, the company, located?

14 A. ThePlatform company is located in Seattle,
15 Washington.

16 Q. Does thePlatform, the company, have a technical
17 account manager for NBC?

18 A. They do. His name is Matan Bareket, and he is
19 located in New York City as well.

20 Q. Can you describe in laymen's terms -- withdrawn.

21 Does your team use thePlatform right out of
22 the box, or do you customize it in some way?

23 A. thePlatform is so entitled because it is a set of
24 services that we could then build upon and customize for
25 the purposes of NBCUniversal so -- to meet our specific

1 needs.

2 Q. And can you describe in laymen's terms how your
3 team customizes thePlatform product?

4 A. I think in laymen's terms it's similar to, I
5 think, you know, maybe a set of Legos. Right? You have
6 a certain set of capability with those Legos; but you can
7 build them and put them together to form, you know, a
8 specific solution for your brand.

9 Q. And using that analogy, how would you describe
10 your own role?

11 A. I guess I'm the chief Lego builder in that regard.

12 Q. All right. What are the primary products you use
13 from thePlatform?

14 A. The primary products are two. One is called
15 "MPX," and that is the -- their solution for
16 delivering -- or for storing video content and creating
17 feeds to syndicate that. And then the other is called
18 the "PDK," which stands for the "player development kit";
19 and that's used for the actual video player or for the
20 consumption of those feeds.

21 Q. Turning back to Exhibit 6. I had already asked
22 you about the nbc.com shows on pages 3 through 6. Now
23 I'd like you to look at pages 6 and 7 for the next set of
24 shows.

25 What role do you and your team provide with

1 respect to the technology for making the NBC News TV
2 shows listed on pages 6 to 7 available online?

3 A. My team is not directly responsible for making
4 these shows available online. However, we are intimately
5 familiar with the technology that is used for each of
6 these episodes. We consult with the NBC News team on it.
7 And Ted McConville is part of that team, and I believe
8 you will be speaking to him later.

9 Q. Thank you. Turning to page 8 of Exhibit 6, what
10 role do you and your team provide with respect to the
11 technology for making the Bravo TV shows on page 8
12 available online?

13 A. My team is subject matter experts with regards to
14 the shows for Bravo. It is a brand located in New York.
15 The technical resources for Bravo reside in New York, and
16 they leverage thePlatform to which they turn to us for
17 advice in terms of how to make those shows available.

18 MR. LIEBERMAN: Your Honor, at this point I'd
19 like to move Exhibit D-6 into evidence.

20 MR. PITCOCK: No objection, your Honor.

21 THE COURT: All right. It is admitted.

22 BY MR. LIEBERMAN:

23 Q. Right after the Bravo shows on page 8, we have
24 Syfy TV shows on pages 8 and 9. What role do you and
25 your team provide with respect to the technology for

1 making the Syfy TV shows available online?

2 A. Like Bravo, Syfy leverages thePlatform to provide
3 the service. They look to my team for leadership in this
4 space and direction. I am aware of all the Syfy
5 technical resources and support them in their endeavors
6 to make these videos available.

7 Q. If you could turn to page 10 of Exhibit 6. What
8 role do you and your team provide with respect to the
9 technology for making the MSN Latino TV shows listed on
10 page 10 available online?

11 A. My team does not directly support the video
12 solution for the folks at Telemundo. They are supported
13 through a third-party arrangement with Microsoft. I am
14 aware of their technical team, I am aware of their
15 solution, and I support them the best I can with regards
16 to that solution.

17 Q. Looking at pages 10 and 11, after MSN Latino we
18 see reference to a number of USA Network TV shows. What
19 role do you and your team provide with respect to the
20 technology for making USA Network TV shows listed on
21 pages 10 and 11 available online?

22 A. Yes. The USA Network video solution is also based
23 upon thePlatform. It is the same as Bravo and Syfy.
24 They consult me for support of that solution.

25 Q. Looking at page 11, right after USA Network we

1 have "*mun dos*" or mun² TV shows, on pages 11 and 12.
2 What role do you and your team provide with respect to
3 the technology for making the mun² TV shows listed on
4 pages 11 and 12 available online?

5 A. mun² is currently in a transition. They are
6 leveraging thePlatform, and we support some of their
7 videos but not necessarily the accused episodes here.
8 The accused episodes here are based off another solution
9 similar to thePlatform called "Brightcove." I'm aware of
10 how they leverage Brightcove and the technical resources
11 that support that for mun².

12 Q. Turning to page 13, we see that the CNBC shows
13 start to be listed on page 13. Could you tell the court
14 what role you and your team provide with respect to the
15 technology for making the CNBC TV shows listed on page 13
16 available online?

17 A. CNBC has -- had a homegrown solution as well for
18 their video service. It is supported by their team; and
19 a colleague of mine, Scott Drake, could speak to that
20 directly. But I am aware of their solution overall and
21 how they use it to support these episodes.

22 Q. And are you aware that Mr. Drake is sitting out in
23 the hallway waiting to testify?

24 A. I am.

25 Q. On page 13 there are a number of Oxygen shows

1 listed. What role do you and your team provide with
2 respect to the technology for making the Oxygen TV shows
3 listed on page 13 available online?

4 A. Oxygen also leverages thePlatform to provide their
5 video solution. I am familiar with all the Oxygen tech
6 leads. I consult them and provide support as it relates
7 to their video solution.

8 Q. On pages 13 and 14 are references to Style TV
9 shows. What role do you and your team provide with
10 respect to the technology for making the Style TV shows
11 listed on pages 13 and 14 available online?

12 A. Style is a network that as present no longer
13 exists; but when it did exist, it was leveraging
14 thePlatform for their services as well. I am familiar
15 with the technical folks that were over at the Style
16 Network and how they made these shows available online.

17 Q. Beginning on page 14, there's reference to Golf
18 Channel TV shows, pages 14 to 17. What role do you and
19 your team provide with respect to the technology for
20 making the Golf Channel TV shows listed on those pages
21 available online?

22 A. My team is not responsible for making the Golf
23 Channel videos available online as is listed here in the
24 accused episodes. However, I have made some of these
25 videos available through another solution for NBC proper.

1 So, I work very closely with their team. I know where
2 all those tech individuals reside, and I've supported
3 them on their current efforts to provide these videos.

4 Q. And are you also knowledgeable about the processes
5 for making NBC sports shows, including the Golf Channel
6 network shows, available online?

7 A. I am.

8 Q. In general, overall, who would you say is the most
9 knowledgeable person as to the technology used at NBC to
10 make TV episodes available online?

11 A. I am. It's my responsibility inside our
12 organization.

13 Q. Where were the documents created with relation to
14 technology used at NBC to make TV episodes available
15 online?

16 A. The documents are created by my team, the vast
17 majority of which reside in New York.

18 Q. What department is most knowledgeable about
19 revenue and ad sales at NBC in connection with the
20 episodes listed in Exhibit D-6?

21 A. That would be --

22 MR. PITCOCK: Objection to form and lacks
23 foundation. There's been no foundation laid for this
24 witness' knowledge.

25 THE COURT: All right. Would you ask the

1 witness his foundation?

2 BY MR. LIEBERMAN:

3 Q. During your years at NBC, have you had occasion to
4 interact from time to time with people in the revenue and
5 ad sales areas?

6 A. I have.

7 Q. And what department is most knowledgeable about
8 revenue and ad sales at NBC?

9 A. NBC has centralized their ad sales into the NBC
10 sales organization.

11 Q. And where is the NBC sales organization?

12 A. It is located in New York.

13 MR. LIEBERMAN: Pass the witness, your Honor.

14 THE COURT: All right.

15 CROSS-EXAMINATION OF ROBERT O'KEEFE

16 BY MR. PITCOCK:

17 Q. All right. So -- I'm sorry. You testified that
18 thePlatform provides the Legos for your team to build
19 upon; is that correct?

20 A. Yes.

21 Q. And they're located in Seattle, Washington?

22 A. Yes.

23 Q. And information about the episodic TV shows that
24 you have been testifying about is stored on their servers
25 in Seattle, Washington?

1 A. Yes.

2 Q. And that company provides a video management
3 content system that's used with these various TV shows
4 that you have been testifying about, correct?

5 A. That is correct, but it's one that we then
6 customize to support our specific needs.

7 Q. So, the customization that you do, what percentage
8 of the code do you change?

9 A. There -- it would be tough to estimate what the
10 percentage is, but it's a fair amount of customization to
11 support our needs.

12 Q. Well, would the video content management system
13 work without any customization by NBC?

14 A. No.

15 Q. What customization is necessary?

16 A. There are -- we have upstream workflows with our
17 broadcast technology in order to be able to get that
18 video content into our video content management system,
19 thePlatform system. We have to enable that relationship;
20 we have to build out those profiles in order to be able
21 to support that.

22 And then by "work," I suppose you could say
23 that it would be able to store that information and make
24 it available for online consumption. However, in order
25 to make it useful to our brands and to be able to display

1 the information they need to make it available online,
2 that requires another degree of customization.

3 Q. Now, thePlatform also provides the player
4 development kit used for viewing the episodic TV shows?

5 A. Yes.

6 Q. And you were able to name five employees in
7 Seattle that work for thePlatform off the top of your
8 head, weren't you?

9 A. Yes.

10 Q. And when you were asked to name them all at your
11 deposition, I believe your testimony was that we'd be
12 there all day.

13 A. Something to that extent. It's a -- I know a lot
14 of employees at thePlatform.

15 Q. Now, do you think employees at thePlatform in
16 Washington have relevant information when it comes to the
17 episodic TV video provided by NBC?

18 A. I think the knowledge of the NBC setup is in a
19 small group of resources at thePlatform. Many of the
20 folks that I named for you previous were leaders --
21 leadership at thePlatform, sales folks at thePlatform.
22 But there's two main folks at thePlatform that support
23 NBC's specific implementation. They are technical
24 account managers at thePlatform. One is Joshua Handsaker
25 who is located in Seattle, and the other is Matan Bareket

1 who is located in New York.

2 Q. So, in terms of the code that went into
3 thePlatform, is it your understanding most of that coding
4 was done in Seattle?

5 A. Yes.

6 Q. And I just want to show you the initial
7 disclosures that were submitted by NBC in this matter.
8 In fact --

9 MR. PITCOCK: I don't know how you -- do you
10 want me to mark it as "P-3"; or do you want me to start
11 over, Mr. Lieberman?

12 MR. LIEBERMAN: I have no preference.

13 MR. PITCOCK: I'd like to mark as Exhibit P-3
14 and move into evidence Defendant NBCUniversal Media,
15 LLC's, initial disclosures.

16 THE COURT: Any objection?

17 MR. LIEBERMAN: None, your Honor.

18 THE COURT: All right. P-3 is admitted.

19 MR. PITCOCK: Permission to approach, your
20 Honor.

21 THE COURT: Yes.

22 BY MR. PITCOCK:

23 Q. Now, I want you to review this document and see
24 whether any mention is made of thePlatform or its
25 employees.

1 A. No.

2 Q. And if you'll look on page 4, do you see Rena
3 Patel listed there?

4 A. Yes.

5 Q. And she negotiated the contract with thePlatform,
6 correct?

7 A. She did.

8 Q. And she lives in Los Angeles, California?

9 A. I am not sure where Rena lives.

10 Q. I'm sorry. Does she work in Los Angeles,
11 California?

12 A. Yes.

13 Q. And Tom Blaxland runs a team of operators that
14 puts content into the video technology solutions; is that
15 correct, sir?

16 A. Tom Blaxland runs a team of operators who use the
17 systems that my team provides.

18 Q. And do they use those systems to put content
19 into --

20 A. Yes.

21 Q. Mr. Blaxland, he also works in Los Angeles?

22 A. Yes.

23 Q. And Jesus Cortez works for Mr. Blaxland's group in
24 Los Angeles, correct?

25 A. Yes.

1 Q. And a person named Trideed Dasgupta, T-R-I-D-E-E-D
2 D-A-S-G-U-P-T-A, found thePlatform as a potential video
3 technology for NBC?

4 A. No. thePlatform was a solution that we already
5 had in place. Trideed was looking to bring NBC -- as I
6 mentioned before, they were on a homegrown solution. So,
7 he was looking at the -- really the benefit of bringing
8 them on from a financial perspective.

9 Q. I see. And Mr. Dasgupta lives in California as
10 well -- or I'm sorry. He works in California as well?

11 A. Yes.

12 Q. Mr. Eddie Lee, who is a VP of technology, makes
13 requests relating to the technology for video content?

14 A. He does.

15 Q. And he works in Los Angeles?

16 A. Yes.

17 Q. And Mr. Michael Martin, who is the senior
18 vice-president of NBC digital product technology and
19 operations, he has responsibilities for the nbc.com
20 Web site?

21 A. He does.

22 Q. And he also works in Los Angeles?

23 A. He does.

24 Q. And you don't make the decisions about what
25 appears on the Web sites; is that correct?

1 A. I don't make decisions about what appears on the
2 Web sites. I just provide the solution by which I
3 make -- those videos are made available.

4 Q. Now, you don't have any personal knowledge of
5 online episodic TV advertising or revenue or marketing,
6 do you, sir?

7 A. Can you clarify the question for me?

8 Q. Sure. You -- well, do you have any personal
9 knowledge with respect to episodic TV advertising? Is
10 that something that you work on from day to day? Do you
11 know how much is spent on advertising, how advertising is
12 done?

13 A. I do, sir, with regards to the implementation of
14 the video solution that allows for the advertising. I
15 don't in terms of what it actually generates.

16 Q. So, you don't have any personal knowledge of the
17 revenue generated by any of these shows?

18 A. That's correct.

19 Q. And do you have any personal knowledge of the
20 marketing related to these shows?

21 A. No, sir.

22 Q. And at your deposition last week you couldn't even
23 name who to ask with respect to advertising or revenue;
24 is that correct?

25 A. As it relates to a specific individual, that's

1 correct.

2 Q. Now, I wanted to go over the exhibit -- excuse me.

3 MR. PITCOCK: I'm sorry, your Honor. I'm just
4 trying to locate the exhibit with the listing of names
5 that...

6 THE COURT: All right. Is it No. 31?

7 MR. PITCOCK: Is it at Tab 31?

8 MR. LIEBERMAN: We handed you a loose copy.

9 MR. PITCOCK: It's also at Tab 31.

10 MR. LIEBERMAN: Here's another copy.

11 MR. PITCOCK: Thank you.

12 BY MR. PITCOCK:

13 Q. I see there are people who work on your team who
14 live in Georgia?

15 A. Yes. They are developers on my team.

16 Q. So, they are involved in writing code to modify
17 thePlatform, for example?

18 A. At the direction of my managers, yes.

19 Q. And there are people who work in Washington State?

20 A. Yes, also developers.

21 Q. Portland, Oregon?

22 A. Yes.

23 Q. Denver, Colorado?

24 A. Yes.

25 Q. Conshohocken, Pennsylvania?

1 A. Yes.

2 Q. Boston, Massachusetts?

3 A. Yes.

4 Q. A few from India; is that correct?

5 A. Yes. Those are again QA resources or quality
6 assurance resources. All the individuals that you have
7 identified take direction from my folks in New York.

8 Q. Right. But they reside outside of New York; is
9 that correct?

10 A. That's correct, yes.

11 Q. You testified that Mr. Patel -- who I guess is an
12 administrator who helps set up meetings and coordinate
13 activities for your group; is that correct?

14 A. Yes.

15 Q. And you said he lives north of Dallas. Do you
16 know what city he actually lives?

17 A. On his resumé it's listed as Frisco, Texas.

18 Q. Now, with respect to all the TV shows in your
19 testimony that your team isn't personally responsible
20 for, do you know the location of the relevant witnesses
21 and documents with respect to online video?

22 A. I'm sorry. Can you repeat that question?

23 Q. Of course. I'll even try to rephrase it a little
24 bit.

25 So, in your testimony you went through a long

1 list of various TV shows, some of which your team was
2 responsible for and some of which your team was not
3 responsible for. And my question for you is: Do you
4 know the location of relevant witnesses and documents for
5 the TV episodes your team is not responsible for?

6 A. Yes.

7 Q. And how do you know that?

8 A. In my day -- day-to-day job, my responsibilities,
9 I interact with the folks who are responsible for those
10 other brands in consulting and advising on their video
11 solutions and what we also provide.

12 Q. Now, the person who has written code for use with
13 metrics and advertising is in Seattle, Washington?

14 A. With regards to our solution, the solution my team
15 supports?

16 Q. Yes.

17 A. That -- that statement is one -- he's one of the
18 developers who would work on that.

19 Q. Is --

20 A. He's not the only developer who works on it.

21 Q. His name is Kevin Campbell?

22 A. That's correct.

23 Q. And one of the people who tests code for you is in
24 Portland, Oregon; is that correct, sir?

25 A. Yes.

1 Q. And I guess that's Hudson Genovese?

2 A. Yes.

3 Q. So, documents related to episodic TV distribution
4 by CBS over the Internet are located primarily in
5 New Jersey?

6 A. I'm sorry. Can you repeat that question?

7 Q. Yes. Documents related to episodic TV
8 distribution by CBS over the Internet, I believe your
9 testimony is that they're located somewhere within
10 New Jersey.

11 A. Sir, you asked about CBS.

12 Q. I'm so sorry. NBC. I must have mistyped it.

13 A. The documents are created in Jersey, yes -- I'm
14 sorry. Actually they're created in New York. My team is
15 located in New York.

16 Q. Are they stored on servers in New Jersey?

17 A. I believe so, yes.

18 Q. And do you know whether documents are located
19 anywhere else such as in California?

20 A. I do not know.

21 Q. And, so, just -- if you could turn to Tab 6 --
22 well, actually, real quick before you do that.

23 So, all these people who work on your team,
24 are they able to upload and download documents, with the
25 right credentials, anywhere there's an Internet

1 connection?

2 A. Specifically what documents? I mean --

3 Q. Well, for example, the code that you have been
4 talking about modifying, can that be done anywhere?

5 A. Yes.

6 Q. If you look at page 18 and the top of page 19,
7 there's a listing of podcasts. Do you see that, sir?

8 A. Yes, I do.

9 Q. And do you have any responsibilities with respect
10 to these podcasts?

11 A. No, I do not.

12 Q. And you mentioned a Mr. McConville having
13 responsibilities with respect to some of the NBC News
14 shows; is that correct?

15 A. Yes.

16 Q. And by that you're referring to all the shows
17 listed on pages 6, 7 -- well, pages 6 and 7?

18 A. I'm referring to the -- some of those shows and
19 the team and the technologies that are used to support
20 all of those shows, yes.

21 Q. And Mr. McConville currently resides in Seattle;
22 is that correct?

23 A. I believe so.

24 MR. PITCOCK: Nothing, pending any redirect.

25 **

1 REDIRECT EXAMINATION OF ROBERT O'KEEFE

2 BY MR. LIEBERMAN:

3 Q. Mr. Pitcock asked you about Mr. McConville and
4 where he resides. Do you know whether he has any plans
5 to move to New York next month?

6 MR. PITCOCK: Objection, lacks foundation.

7 THE COURT: The question is "do you know."

8 THE WITNESS: Yes.

9 BY MR. LIEBERMAN:

10 Q. Does he?

11 A. Yes.

12 MR. PITCOCK: Same objection.

13 BY MR. LIEBERMAN:

14 Q. Mr. Pitcock asked you about podcasts I believe on
15 pages 18 and 19. Who do you understand has
16 responsibility -- withdrawn.

17 Who do you understand are the most
18 knowledgeable people at NBC regarding those podcasts?

19 MR. PITCOCK: Objection, lacks foundation.

20 MR. LIEBERMAN: Let me rephrase the question,
21 your Honor, if that's okay.

22 THE COURT: I'll overrule the objection.

23 A. I understand Scott Drake has that knowledge.

24 BY MR. LIEBERMAN:

25 Q. And Mr. McConville and Mr. Drake are both here

1 today to testify?

2 A. Yes, they are.

3 Q. Now, Mr. Pitcock asked you about various members
4 of your 38-person team who are in a number of different
5 locations around the country. Are any of those people
6 your top-level lieutenants or managers on your team?

7 A. They are not.

8 Q. And how many top-level lieutenants/managers do you
9 have on your team?

10 A. I have three, and they are located in New York.

11 Q. And you yourself are located where?

12 A. I am also located in New York.

13 Q. By the way, there was reference to documents being
14 stored in New Jersey. How far away is the NBC office in
15 New Jersey from the NBC office in New York City?

16 A. Perhaps no more than 10 miles.

17 Q. Mr. Pitcock asked you a number of questions where
18 he seems to have pulled out the names of virtually
19 everybody at NBC who worked somewhere other than in
20 New York -- Mr. Blaxland, Mr. Lee, Mr. Martin. Do any of
21 those people have more -- as much or more knowledge as
22 you and your teams do -- you and your team does regarding
23 the technology used to provide the content on the NBC Web
24 sites?

25 A. With regard to those individuals mentioned, they

1 rely on my team to provide that technology.

2 Q. And Ms. Patel, what was her role with respect to
3 thePlatform?

4 A. Negotiating the rates that we pay thePlatform.

5 Q. And Mr. Pitcock asked you certain questions about
6 whether thePlatform was listed on the initial
7 disclosures. In your view, which is -- withdrawn.

8 Mr. Pitcock asked you certain questions about
9 the disclosures regarding thePlatform or the fact that
10 there aren't any disclosures regarding thePlatform in the
11 initial disclosures for NBC. Does NBC use thePlatform
12 technology without customization?

13 A. No.

14 Q. And are there people who customize thePlatform
15 listed on the NBC initial disclosures?

16 A. Yes.

17 Q. And where is all the customization done?

18 A. The customization is done by various developers
19 and QA resources; but the direction, the task definition
20 occurs in New York.

21 Q. With you and your team?

22 A. Yes.

23 MR. LIEBERMAN: I have no further questions,
24 your Honor.

25 THE COURT: All right. Very well. Thank you.

1 You may step down.

2 THE WITNESS: Thank you.

3 MR. LIEBERMAN: Your Honor, could this witness
4 be excused?

5 THE COURT: Yes, he is excused.

6 MR. LIEBERMAN: NBC now calls Mr. Scott Drake
7 to the stand.

8 (Oath administered.)

9 DIRECT EXAMINATION OF SCOTT DRAKE

10 CALLED ON BEHALF OF DEFENDANT NBC

11 BY MR. LIEBERMAN:

12 Q. Could you tell the court your full name, please?

13 A. Scott Drake.

14 Q. For whom do you work?

15 A. NBCUniversal.

16 Q. What is your title?

17 A. I'm senior vice-president of technology for the
18 NBC News Group, NBCUniversal.

19 Q. And where do you work?

20 A. I work at NBCUniversal headquarters at Rockefeller
21 Center, New York City.

22 Q. And where do you live?

23 A. I live in Milton, Georgia. It's about 20 miles
24 outside of Atlanta. I commute four days a week. I fly
25 up on Monday mornings to New York, LaGuardia Airport, and

1 then go to my office at Rockefeller Center and then fly
2 back on Thursdays to see my family.

3 Q. For how long have you been doing this?

4 A. Since about 2005.

5 Q. Why do you do this?

6 A. Well, I love my job at NBC -- I have worked there
7 since 1999 -- but I love my family, too. And my extended
8 family is also in the Atlanta area -- my brother, my
9 sister, my aunts and uncles, my cousins -- and we all
10 live about 10 miles away from each other.

11 I have been married for about 27 years. Me
12 and my wife have 3 kids, and it's -- you know, to balance
13 out the family with a job that's so demanding, we thought
14 it's a good way to kind of do both.

15 Q. How do you like traveling?

16 A. I don't really like it. I do it twice a week and
17 I've done it for eight years, but I really -- I don't
18 particularly enjoy travel as much. In fact, I've
19 probably only flown out of the country, out of the United
20 States, a couple of times for business, you know, once to
21 London, once to Copenhagen; and I've taken my wife for an
22 anniversary trip to Paris about 15 years ago.

23 Q. Could you tell us -- could you tell the court
24 about your educational background, please?

25 A. Yeah. I went to Park Ridge High School in

1 New Jersey, and then I attended Rutgers University. I
2 played tight end at Rutgers, while it's not -- it is a
3 Division I school. Maybe not as big as the SEC or the
4 Big 12, but I enjoyed my time there.

5 Q. What was your degree in?

6 A. In civil engineering. I also learned a lot about
7 computers and software.

8 Q. What did you do before joining NBC in 1999?

9 A. So, I worked for Bloomberg as a software
10 developer. While I was there, I was promoted to
11 essentially run the Bloomberg Web site. And I developed
12 also an expertise -- we syndicated a lot of sites. That
13 way I also developed an expertise in setting up other
14 media sites.

15 Q. And what was your prior job at NBC before the one
16 you have now?

17 A. So, as of I think August of 2013, I was a senior
18 vice-president of CNBC technology and quantitative
19 services.

20 Q. And where did you work in that role?

21 A. At CNBC headquarters in Englewood Cliffs,
22 New Jersey.

23 Q. How far is Englewood Cliffs, New Jersey, from New
24 York City?

25 A. Just right over the bridge. Maybe about 5 miles,

1 something like that.

2 Q. So, not like Texas distances.

3 A. No, not like Texas distances.

4 Q. Could you tell the court how long you held your
5 previous position and what you did in that job?

6 A. Yeah. So, I held that position about 14 years. I
7 started in 1999 and ended in August of 2013. I was in
8 charge of all the CNBC digital products and services, and
9 I would say data services for our on-air TV products.

10 Q. What is the relationship between CNBC and the
11 defendant in this case, NBCUniversal Media, LLC?

12 A. So, CNBC is owned and operated by NBCUniversal
13 which is located in New York City.

14 Q. Okay. And is there a difference between NBC and
15 CNBC?

16 A. So, I think of NBC as more of the prime time and
17 CNBC as a financial news network or business network.

18 Q. And where physically do you work now?

19 A. I work for NBCUniversal headquarters at 75
20 Rockefeller Center Plaza.

21 Q. So, if you could look, please, at Tab 7 in your
22 binder.

23 A. Uh-huh.

24 Q. This is the first amended complaint.

25 A. 7?

1 Q. Tab 6. I'm sorry.

2 A. 6. Okay. I'm in Tab 6.

3 MR. LIEBERMAN: Your Honor, we have had a
4 brief snafu with the exhibits. If I may approach the
5 witness and hand him a copy of the complaint.

6 THE COURT: Yes.

7 BY MR. LIEBERMAN:

8 Q. If you could look, please, at the "First Amended
9 Complaint for Patent Infringement" against NBC,
10 specifically paragraph 10 of that document.

11 A. Yes.

12 Q. First could you look at the last page of the
13 document and tell me when this was filed?

14 A. The last page? It's dated June 10th, 2013.

15 MR. LIEBERMAN: Your Honor, may I hand up a
16 copy to the bench of this document?

17 THE COURT: Yes.

18 BY MR. LIEBERMAN:

19 Q. Looking at the podcasts listed in paragraph 10,
20 could you tell the court whether you played any role with
21 respect to the podcasts identified in that paragraph?

22 A. Yeah. All the podcasts that have "CNBC" on it, as
23 of August of 2013, me and my team were responsible for
24 dealing with all the technology concerns with the
25 podcasts and also the dissemination of those podcasts

1 over the Internet.

2 Q. And how many CNBC podcasts are listed in that
3 paragraph 10?

4 A. Eight.

5 Q. And can you identify the other members of your
6 team who had responsibility for those podcasts?

7 A. Yeah. Phil DeLeon, Nilesh Thakur, and Vito
8 Tattoli.

9 Q. And were there any members of your team who
10 reported to any of these individuals?

11 A. Oh, yeah. There was a group of video editors that
12 reported -- five video editors that reported to Vito
13 Tattoli. So, there was probably approximately about
14 eight people.

15 Q. And where does Mr. Phil DeLeon work?

16 A. In Englewood Cliffs, New Jersey.

17 Q. Mr. Nilesh Thakur?

18 A. Englewood, New Jersey.

19 Q. Vito Tattoli?

20 A. Englewood, New Jersey.

21 Q. And could you tell the court what each of these
22 people do specifically?

23 A. So, Phil is a front-end developer, helps out with
24 a lot of the setup of the podcasts. Nilesh is our
25 director of software operations. He handled a lot of the

1 workflow tools. And then Vito and his team actually
2 produce the actual video for the podcasts.

3 Q. And do you know where Mr. Tattoli's team works?

4 A. Yeah. Englewood Cliffs, New Jersey.

5 Q. As far as you know, do any of these individuals
6 commute as you do from some remote location?

7 A. No.

8 Q. You testified that you no longer hold the position
9 of senior vice-president of CNBC technology and
10 quantitative services. What is your new position?

11 A. I'm the senior vice-president of technology for
12 the NBC News Group.

13 Q. And who has taken your old position as senior
14 vice-president of CNBC technology and quantitative
15 services?

16 A. Scott Boyarsky.

17 Q. And where does Mr. Boyarsky work?

18 A. He's in the same CNBC office as where I used to
19 work in Englewood Cliffs, New Jersey.

20 Q. That's the office where you worked for 14 years?

21 A. For 14 years, yes. That's correct.

22 Q. Where does Mr. Boyarsky live?

23 A. He lives in New Jersey.

24 Q. Who are the most knowledgeable people at NBC regarding
25 the technology used to disseminate CNBC podcasts?

1 A. Can you repeat that again?

2 Q. Who are the most knowledgeable people at NBC
3 regarding the technology used to disseminate CNBC
4 podcasts?

5 A. That would be Scott Boyarsky and my old team and
6 myself.

7 Q. Directing your attention now to what's been --
8 withdrawn.

9 Directing your attention to what's in evidence
10 as Exhibit D-6, the "Amended Disclosure of Asserted
11 Claims and Infringement Contentions." Could you first
12 look at page 28 and tell me what the date is on this
13 document?

14 A. On Tab 28?

15 Q. This is D-6, Tab 6 --

16 A. Okay.

17 Q. -- page 28.

18 A. And what are you asking?

19 Q. What's the date on the document?

20 A. August 9th, 2013.

21 Q. Okay. So, you had previously looked at paragraph
22 10 of the complaint which was dated June 10th of 2013.
23 I'm now going to ask you to look at pages 18 and 19 of
24 the infringement contentions which is dated August 9th,
25 2013.

1 A. Okay.

2 Q. Can you tell me what's listed in the chart on
3 pages 18 and 19?

4 A. There are a series of eight podcasts.

5 Q. And this isn't the identical list of podcasts that
6 was in the complaint, correct?

7 A. Correct.

8 Q. Can you tell me out of these eight podcasts, for
9 how many of them do you have personal knowledge regarding
10 the technology used to disseminate any of these podcasts?

11 A. Six of them. Any of them that are available at
12 CNBC.

13 Q. So, can you tell the court where the CNBC ones
14 start and where they end, looking at pages 18 and --

15 A. Yeah. Starts at *CNBC Suze Orman Show* and ends on
16 page 19 at *CNBC Options Action*.

17 Q. And which group is now in charge of the technology
18 for disseminating those six podcasts?

19 A. Scott Boyarsky and my old team.

20 Q. Could you look at Exhibit 6, page 13 now? Do you
21 see starting at the top of the page and running about
22 halfway down a reference to certain CNBC episodes?

23 A. Yes.

24 Q. Could you tell me what role you played in your
25 former job with respect to the dissemination of these

1 CNBC episodes?

2 A. So, we work with Bravo's team actually doing T.V.
3 Everywhere; and these were part of that dissemination
4 through Rob's efforts.

5 Q. And what role does your former team continue to
6 play, if any, with respect to the dissemination of these
7 CNBC episodes.

8 A. They still support it and work with Rob's team in
9 creating content.

10 Q. Does NBCUniversal have any personnel knowledgeable
11 regarding the technology used to disseminate CNBC
12 podcasts or episodes in the Eastern District of Texas?

13 A. No.

14 Q. Does NBCUniversal have any personnel knowledgeable
15 regarding the technology used to disseminate the CNBC
16 podcasts or episodes anywhere in the State of Texas?

17 A. No.

18 Q. Where was the technology used to disseminate the
19 podcasts or episodes developed?

20 A. At CNBC headquarters in Englewood Cliffs, New
21 Jersey.

22 Q. How do you know that?

23 A. Because me and my team developed the technology at
24 CNBC.

25 Q. Thank you.

1 MR. LIEBERMAN: I'll pass the witness, your
2 Honor.

3 MR. PITCOCK: I'd like to mark as Exhibit P-4
4 and move into admission the "Declaration of Scott Drake
5 in Support of Defendants' Motion to Transfer Venue."

6 MR. LIEBERMAN: Your Honor, the witness is
7 present here in person. I'm not sure why the declaration
8 should be going into evidence.

9 THE COURT: I'm pretty sure he intends to
10 attempt to use it for impeachment, would be my guess.
11 But why don't you go ahead and use it first, and then
12 we'll deal with its admission.

13 MR. PITCOCK: Certainly, your Honor.

14 CROSS-EXAMINATION OF SCOTT DRAKE

15 BY MR. PITCOCK:

16 Q. Well, Mr. Drake, do you recall mentioning that you
17 live in Georgia in your declaration?

18 A. No. I didn't think that -- I didn't think it was
19 relevant.

20 Q. You understand this is a motion to transfer venue
21 from Texas to New York?

22 A. But all the technology and all the knowledge is in
23 Englewood Cliffs, New Jersey.

24 Q. Except for you, sir. You reside in Georgia, don't
25 you?

1 A. But I'm --

2 MR. LIEBERMAN: Objection, argumentative.

3 THE COURT: Overruled.

4 A. I live in New Jersey -- I mean, I live in Georgia;
5 but I work in New Jersey at that time.

6 BY MR. PITCOCK:

7 Q. Well, you lived in Georgia and commuted back and
8 forth to New Jersey every week for eight years. Is that
9 your testimony?

10 A. Yes, that's correct.

11 Q. How long would it take you to get from your home
12 to the airport in Georgia?

13 A. Approximately 45 minutes.

14 Q. And then you go to the airport in Georgia, and you
15 fly into LaGuardia; is that correct?

16 A. That is correct.

17 Q. And how long does that flight take?

18 A. Most times it takes two hours.

19 Q. And then I guess for a lot of the time you were
20 coming from LaGuardia which is a New York airport in
21 Queens, correct?

22 A. That is correct.

23 Q. And you were commuting to Englewood Cliffs,
24 New Jersey; is that right?

25 A. That is correct.

1 Q. And how long would that take, sir?

2 A. It's only 12 miles from LaGuardia Airport to
3 Englewood Cliffs.

4 Q. I understand it's 12 miles, but that can be a
5 really long commute.

6 A. Actually in the morning on Monday mornings, I'm
7 going reverse traffic way. Most people are coming into
8 the city; I'm going out. I make it, you know, in under
9 30 minutes.

10 Q. How about when you're going back on Thursday?

11 A. Going back to New York?

12 Q. Well, when you're going from Englewood Cliffs,
13 New Jersey, where you work there, and you're going to
14 LaGuardia, how long would that take on a Thursday evening
15 before you flew back to Georgia?

16 A. It depends on the time of day, but usually if I'm
17 leaving -- I usually leave in the evening. Take me
18 anywhere from 30 minutes to 40 minutes.

19 Q. Did it ever take longer than that?

20 A. There's been occasions where it's taken longer,
21 yes.

22 Q. Now, in your declaration you state that "The
23 principal technical, marketing, and sales documentation
24 relating to CNBC Podcasts is located primarily in
25 Englewood Cliffs, New Jersey"; is that correct?

1 A. That is correct.

2 Q. Where else are documents located?

3 A. Documents for the podcasts?

4 Q. Any -- yes, relating to the CNBC podcasts, are
5 there technical, marketing, or sales documents that
6 reside outside of Englewood Cliffs, New Jersey?

7 A. Englewood Cliffs, New Jersey, and maybe New York,
8 too.

9 Q. Not in Los Angeles?

10 A. Not to my knowledge.

11 Q. Now, the system at CNBC for documents, it allows
12 you to download or upload them from anywhere; is that
13 correct?

14 A. Yeah. We use a wiki that lets you upload and
15 download information.

16 Q. And in fact you've worked on those documents from
17 your home in Georgia, correct?

18 A. Occasionally I work in Georgia, yes.

19 Q. And you fly more than 50,000 miles a year, sir?

20 A. Yes.

21 MR. PITCOCK: Your Honor, at this time I'd
22 like to again move into admission this witness'
23 declaration.

24 THE COURT: All right. Any objection?

25 MR. LIEBERMAN: I don't have an objection,

1 your Honor.

2 THE COURT: All right. What is the number?

3 MR. PITCOCK: It would be Exhibit No. P-4,
4 your Honor.

5 THE COURT: All right. P-4 is admitted.

6 BY MR. PITCOCK:

7 Q. And do you have any knowledge of the location of
8 any witnesses related to the prior art in this matter,
9 sir?

10 A. Excuse me? Can you repeat that?

11 Q. Well, you understand this is a patent case?

12 A. Uh-huh.

13 Q. And one of the things that people try to prove in
14 patent cases is that the technology was known before the
15 patent. Do you understand that?

16 A. Yes.

17 Q. And do you have any knowledge of any relevant
18 personnel with respect to such prior technology?

19 A. I -- could you repeat that again? I just want to
20 make sure I understand the question.

21 Q. Sure. I used the legal term "prior art" which is
22 what's -- you know, prior technology related to the
23 podcasts. Do you have any personal knowledge of the
24 location of any witnesses or documents with respect to
25 prior art?

1 A. No, I don't.

2 MR. PITCOCK: Nothing further at this time.

3 THE COURT: All right.

4 MR. LIEBERMAN: We have nothing further, your
5 Honor, and ask that the witness be excused.

6 THE COURT: All right. Thank you, sir. You
7 may step down. You are excused.

8 MR. LIEBERMAN: NBC calls its next witness,
9 Mr. Ted McConville.

10 (Oath administered.)

11 DIRECT EXAMINATION OF EDWARD J. "TED" MCCONVILLE

12 CALLED ON BEHALF OF DEFENDANT NBC

13 BY MR. LIEBERMAN:

14 Q. Please tell the court your name.

15 A. Edward John McConville.

16 Q. Are you known by any other name?

17 A. I go by "Ted McConville."

18 Q. And for whom do you work?

19 A. NBCUniversal.

20 Q. What's your current job title there?

21 A. Director of video engineering.

22 Q. For which part?

23 A. For the News Digital.

24 Q. And how long have you been the director of video
25 engineering?

1 A. Since 2005.

2 Q. Could you briefly describe your work experience in
3 the TV industry?

4 A. Yes. I started out of high school working at a TV
5 station. I was actually working in scenery. Then I was
6 on training course to become a cameraman and then after
7 that I moved into the technical side and that's when I
8 got my technical training in Australia. Then I moved to
9 Canada. I worked in television and film there. In 1978
10 I moved to Los Angeles. I worked for Complete --

11 THE REPORTER: "Complete" -- I'm sorry? I'm
12 having a hard time hearing you.

13 THE WITNESS: I'm sorry.

14 THE REPORTER: You moved to Los Angeles and
15 worked for whom?

16 THE WITNESS: Complete Post.

17 THE REPORTER: Complete Post. Thank you.

18 BY MR. LIEBERMAN:

19 Q. Please continue.

20 A. And I worked for them for 15 years as an
21 engineering manager. Our work there was primarily on
22 situation comedies, film transfers, and commercials.

23 In 1995 I was recruited to Microsoft to work
24 on their interactive television properties, and a year
25 into that I was asked to transfer as an employee on loan

1 to the msnbc.com joint venture.

2 Q. And has there been a period of time in your career
3 where you've worked on the issue of getting video into
4 media Web sites?

5 A. Yes, it has.

6 Q. And for how long have you been working in that
7 area?

8 A. Since I started with the msnbc.com joint venture.

9 Q. What is your current residence address?

10 A. I live in Kirkland, Washington.

11 Q. Do you have any plans for moving?

12 A. I am. I'm relocating to New York City on
13 March 16th.

14 Q. And why are you moving to New York?

15 A. I was advised when Microsoft sold out of the joint
16 venture, somewhere around May of 2012, that my job would
17 be relocated to New York.

18 Q. And have there been some delays in making the move
19 over the last couple of months?

20 A. Yes. Yes, sir, there have been.

21 Q. But the delays are now done and --

22 A. The delays are finally over, yes; and I received a
23 move date.

24 Q. Boxes packed?

25 A. Boxes are packed as we speak.

1 Q. Is it just you who is being moved to New York from
2 Washington?

3 A. No. My fiancée is moving with me.

4 Q. I was actually thinking more about the people on
5 your team, but that's good to know too.

6 A. Well, she's the most important.

7 Q. Okay. Fair enough.

8 A. Yes. One other person on my team is also being
9 moved to New York.

10 Q. And who is that person?

11 A. That's Simon church.

12 Q. And when will Mr. Church be moving to New York?

13 A. He is scheduled to move in August of this year.

14 Q. Now, have you traveled to New York often for your
15 work?

16 A. I have.

17 Q. Approximately how many times?

18 A. Three times a year.

19 Q. And who was on your team at NBC News Digital?

20 A. I have five people on my team.

21 Q. Who were they?

22 A. I have Simon Church, Kevin Crumley, Bill Geer,
23 Brian Zimmer, and as of today Kenny Chin.

24 Q. And where are those team members located?

25 A. Brian Zimmer and Kenny Chin are located at

1 30 Rock.

2 Q. 30 Rock, for the court, is --

3 A. Sorry. I'm sorry. Rockefeller Center in
4 New York.

5 Q. And where are the others?

6 A. The others are located in Seattle, Washington.

7 Q. I think you mentioned Mr. Church is going to be
8 relocating?

9 A. That is correct.

10 Q. And where will he be relocating to?

11 A. He'll be relocating to 30 Rock, to New York City.

12 Q. Who do you report to?

13 A. Currently I report to Greg Carter in New York.

14 Q. Who did you report to until last week?

15 A. Marcus Saxton in New York.

16 Q. I'm going to ask you to direct your attention to
17 Exhibit D-6 which is in your binder. And please turn
18 your attention to pages 6 and 7 of this document. These
19 are plaintiff's infringement contentions.

20 Do you see on pages 6 and 7 there are a number
21 of episodes from NBC News?

22 A. I do.

23 Q. Do you have a role with respect to the NBC News
24 shows identified in pages 6 and 7 of these infringement
25 contentions in Exhibit D-6?

1 A. Yes. On some of these shows, me and my team are
2 involved in it.

3 Q. And describe the role that -- withdrawn.

4 Describe what you and your team do with
5 respect to these shows.

6 A. So, we provide the technology that converts the
7 files that are necessary to get up on the Web for these
8 particular shows.

9 Q. And let's break that down a little bit. Describe
10 for the court the process of taking an NBC News show and
11 publishing it over the Internet.

12 A. So, it starts off with a system called "Avid" in
13 New York. That records a show, for example, *Nightly*
14 *News*. Once that show is started, an editorial person
15 will then be able to view that on an editing client
16 machine and break the show down into individual segments.
17 When they have finished making an individual segment,
18 that then -- that drops a file into my team's world and
19 that triggers our production systems to then produce
20 files -- four different types of files that are necessary
21 to go up on the Web so that the video can be shown on the
22 Web.

23 Q. And where does the -- after the *Nightly News*, or
24 whatever the show, goes on the air, where does the
25 recording onto the digital editing system take place?

1 A. That takes place in New York.

2 Q. And where does the use of the Avid system take
3 place?

4 A. That is in New York.

5 Q. And where is the output file produced?

6 A. In New York.

7 Q. And where is it sent?

8 A. It's sent to what's called a "content delivery
9 network," a CDN; and we upload into an entry point in
10 New York.

11 Q. And when the final formats are ready, how -- and
12 here I'm interested in geographically -- sort of how and
13 where are the files uploaded onto the Web?

14 A. We upload them into an entry point into the
15 content delivery network in New York. The entry points
16 all use airline -- airport designations. So, LGA is
17 where we upload them. I do not know where they go after
18 that within the distribution system.

19 Q. Do any of these steps that you've described for
20 the court take place in Texas?

21 A. No.

22 Q. Are there any people in Texas who are
23 knowledgeable about these steps with respect to the NBC
24 News episodes?

25 A. No, there are not.

1 Q. Who is the most knowledgeable person at NBC -- or
2 who are the most knowledgeable people at NBC about the
3 systems for making TV episodes listed on pages 6 and 7
4 with respect to NBC News available over the Internet?

5 A. So, with regard to the shows on pages 6 and 7 that
6 are strictly -- come under the news division, I would say
7 Stokes Young who is in New York; Eric Zuckerman who is in
8 New York; and on the technical side is with the player,
9 Hayley Lawrence who is in Seattle.

10 Q. And who is the most knowledgeable regarding the
11 process for the msnbc shows?

12 A. That would be Sam Go and Hayley Lawrence.

13 Q. Okay. Where is Mr. Go?

14 A. Ms. Go.

15 Q. Ms. Go.

16 A. Ms. Go is in New York City.

17 Q. Please direct your attention to pages 18 and 19 of
18 Exhibit 6, the infringement contentions.

19 Do you have a role with respect to any of the
20 podcasts identified on pages 18 to 19 of the infringement
21 contentions?

22 A. The only podcast that I am aware of that we have
23 an association with is *ZeitGeist*.

24 Q. And what steps are performed with respect to
25 making *ZeitGeist* podcasts available on the Internet, and

1 who does those steps?

2 A. So, very similar to the video, the material is
3 ingested into an Avid editing system. The start and stop
4 points of the show are selected by a production editor.
5 A file drops into my world. And in the case of
6 *ZeitGeist*, I have a process that determines that that is
7 a podcast and that a new what we call an "RSS file" has
8 to be created and my process automatically triggers,
9 makes that file, and pushes it up onto the Web.

10 Q. Who developed the software that does that?

11 A. I developed that software that makes the RSS file.

12 Q. And were you in Texas when you developed that
13 software?

14 A. No. I was in Redmond, Washington.

15 Q. Where is the software located for getting the NBC
16 News podcasts up on the Internet?

17 A. That's stored at Rockefeller Center in New York.

18 Q. And who is the most knowledgeable person at NBC
19 about how the podcast system works?

20 A. That would be myself and David Britt-Friedman.

21 Q. Where are the documents and the systems located
22 for making NBC News shows available online?

23 A. That's in New York at Rockefeller Center.

24 Q. And where is the -- withdrawn.

25 Where is the source code located?

1 A. The source code is stored on servers in New York
2 City.

3 Q. And do you know who has knowledge about ad sales
4 or revenue in connection with the NBC News videos?

5 A. I do not know.

6 Q. Where is David Britt-Friedman? Where does he work
7 out of?

8 A. He works out of New York, Rockefeller Center.

9 Q. Is there anybody at NBC in Texas who is
10 knowledgeable about the technology used to put NBC News
11 podcasts and TV episodes -- and the TV episodes we
12 discussed up on the Internet?

13 A. There is not.

14 MR. LIEBERMAN: I pass the witness, your
15 Honor.

16 CROSS-EXAMINATION OF EDWARD J. "TED" MCCONVILLE
17 BY MR. PITCOCK:

18 Q. So, when you developed the podcast, you were in
19 Redmond, Washington?

20 A. That is correct.

21 Q. And you've lived in Kirkland, Washington, since
22 the -- since April of 2013 at least. I guess for much
23 longer than that; is that correct?

24 A. I've lived in Kirkland since 1998.

25 Q. And your team currently has three people who live

1 and work in Seattle?

2 A. That is correct.

3 Q. And you mentioned that you travel extensively to
4 New York; is that correct?

5 A. I wouldn't call it "extensive." Three times a
6 year approximately.

7 Q. So, it would be incorrect to say that you travel
8 extensively to New York?

9 A. Yes.

10 Q. Do you recall submitting a declaration in this
11 case?

12 A. Yes.

13 Q. Do you see paragraph 7, sir?

14 A. I do.

15 Q. It says, "While I currently reside in Redmond,
16 Washington, I travel to New York City extensively for
17 work"?

18 A. It's --

19 Q. Do you see that, sir?

20 A. Yes, I do see it.

21 Q. Do you remember putting that in your declaration?

22 A. It seems extensive to me.

23 Q. So, it seems extensive to you now?

24 A. Traveling seems extensive to me, yes, sir.

25 Q. All right. But it didn't a few minutes ago.

1 MR. LIEBERMAN: Objection, your Honor.

2 Argumentative.

3 THE COURT: I'll overrule the objection.

4 BY MR. PITCOCK:

5 Q. You can answer. Did it seem extensive to you a
6 few minutes ago when you were answering my question,
7 travel to New York?

8 A. Any travel seems extensive to me.

9 Q. So, one trip to New York City, that would be
10 extensive travel?

11 A. No, one is not extensive.

12 Q. Now, you mentioned a -- I guess what I'll call
13 "video processing" or "editing system" in New York --

14 A. Uh-huh.

15 Q. -- called "Avid"; is that correct?

16 A. Correct.

17 Q. Now, did NBC develop that program?

18 A. No. That's manufactured by a company called
19 "Avid."

20 Q. Manufactured by a company called "Avid"?

21 A. Yes.

22 Q. And where is that company located?

23 A. I believe they're in Massachusetts.

24 Q. And does -- do any of the products you're
25 responsible for use thePlatform?

1 A. Yes, we do.

2 Q. Okay. So, all the video products for CNBC, they
3 use thePlatform; is that correct?

4 A. I don't know about CNBC.

5 Q. I'm sorry. NBC News. I apologize, sir. Over the
6 Web, I should say.

7 A. Yes. We are migrating to thePlatform. I don't
8 know how extensive that is at this time.

9 Q. And they're located in Seattle, Washington?

10 A. They are in Seattle.

11 Q. Do you know any employees in Seattle?

12 A. I have only met one or two employees in meetings.
13 I do not know them directly.

14 Q. Now, your deposition in this case took place in
15 Seattle, Washington; is that correct?

16 A. That is correct.

17 Q. Now, during your deposition do you remember
18 identifying Mr. Locke as potentially having relevant
19 information?

20 A. I do.

21 Q. And he resides in Washington State?

22 A. He does.

23 Q. Now, are you able to access relevant documents for
24 your work at your home in Washington?

25 A. I can with the right credentials, yes.

1 Q. Who is your -- I'm sorry. Strike that.

2 You testified about content delivery networks.
3 Which content delivery networks do you use?

4 A. We use Akamai and another company called
5 "Limelight Networks."

6 Q. And when you say "content delivery network,"
7 they're -- after you edit the video with the Avid process
8 developed by that company, you then upload the video and
9 does -- is thePlatform used for managing that content?

10 A. Yes, they are.

11 Q. Okay. And then after thePlatform is used for
12 managing the content, then it's distributed by a content
13 distribution network, CDN?

14 A. That is correct.

15 Q. And, so, is your understanding that those servers
16 are located throughout the United States so that anybody
17 who wants to see a relevant video doesn't have to wait
18 for it to come from New York?

19 A. I understand they are worldwide, yes.

20 Q. Okay. So, would it be your understanding that
21 this content, if somebody were to access it from the
22 Eastern District of Texas, is probably coming from a
23 server in Texas?

24 A. I don't know that for sure. I'm led to believe
25 that that is how the system would work.

1 Q. Well, given your technical expertise, wouldn't you
2 want to reduce the lag time between a request for video
3 and actually displaying it on the computer screen?

4 A. Correct.

5 Q. So, you'd want that server as close geographically
6 to the user as possible. Is that your understanding?

7 A. I'd want a server that works connected to the
8 user. It doesn't necessarily mean it has to be right
9 next-door to them. A server farm right next-door to them
10 could be overloaded with users. So, I would want them to
11 go somewhere else where they could be served.

12 Q. So, who are the most relevant witnesses at the
13 content delivery networks?

14 A. I don't know. I only deal with sales --
15 occasionally a salesperson.

16 Q. And do you know where their documents would be
17 located?

18 A. No, I do not.

19 Q. And do you know who the most relevant people would
20 be at the -- strike that.

21 Do you know who the most relevant witnesses
22 would be at thePlatform?

23 A. No, I don't.

24 Q. Do you know where their documents would be
25 located?

1 A. I do not know.

2 Q. Now, for their software, do you think that they
3 have copies of the source code?

4 A. Which source code?

5 Q. Well, for the -- that's a good question.

6 So, you use their software to provide a
7 platform for services; is that correct?

8 A. That is correct.

9 Q. And I understand it's modified; but that original
10 source code was developed by them and presumably in
11 Seattle, Washington?

12 A. I don't know where it was developed.

13 THE COURT: Mr. Pitcock, we're going to take a
14 recess here. I've got a criminal matter to take up at
15 3:00 which won't take too long, but if you could just --
16 everybody can keep their stuff where it is. If you could
17 just make the podium clear.

18 MR. PITCOCK: Yes, your Honor. No problem.

19 THE COURT: And we'll take back up here at
20 about 3:15.

21 MR. PITCOCK: No problem.

22 THE COURT: Take a brief recess while we
23 gather the criminal case in.

24 (Recess, 3:01 p.m. to 3:24 p.m.)

25 THE COURT: Mr. McConville, if you would come

1 back up on the stand. Thank you.

2 And, Mr. Pitcock, you have the witness.

3 MR. PITCOCK: Yes, your Honor.

4 BY MR. PITCOCK:

5 Q. So, earlier in your testimony you were talking
6 about thePlatform.

7 A. Yes.

8 Q. Do you recall that?

9 A. (Moving head up and down.)

10 Q. So, you stated that they had two different
11 products, the MPX and the PDK; is that correct?

12 A. I don't believe I mentioned that.

13 MR. LIEBERMAN: That was another witness, your
14 Honor.

15 MR. PITCOCK: Sorry.

16 THE COURT: All right. Well, I think the
17 witness cleared it up. Go ahead.

18 BY MR. PITCOCK:

19 Q. Are you aware of those two --

20 A. I am aware of it.

21 Q. Okay. And what does the MPX do?

22 A. I believe the MPX is the -- is the video content
23 management system, and I believe the PDK refers to the
24 player.

25 Q. And what do you have to do to a video file in

1 order to get it to work with MPX?

2 A. I don't know that.

3 Q. Okay. When we say "video content management
4 system," would that piece of the software be responsible
5 for taking an uploaded file and converting it into
6 various Web formats for viewing?

7 A. It's possible. I don't use it that way.

8 Q. How do you use it?

9 A. I don't use it directly.

10 Q. Oh, you don't use it. I'm sorry.

11 A. I don't use it directly, no.

12 Q. Okay. And some of the NBC News podcasts are
13 produced in Redmond, Washington; is that correct?

14 A. No, that's not correct. The podcasts are all --
15 any podcasts are produced in New York.

16 Q. None are produced in Washington, DC?

17 A. No. There are no staff there to produce them.

18 Q. I'm going to show you your declaration. It
19 says -- you see paragraph 4 there, sir?

20 A. Yes.

21 Q. The second sentence says, "Some of the NBC News
22 Podcasts are produced in Redmond, Washington"?

23 A. At the time that would have been correct.

24 Q. So, at the time you filed your declaration.

25 A. Yes, that is correct.

1 Q. Okay. So, since the time of the filing of the
2 motion to transfer, podcasts that were produced in
3 Redmond, Washington, have been moved to New York City?

4 A. That is correct.

5 Q. And some of the podcasts that were produced in
6 Washington, DC, have now been moved to New York City?

7 A. Correct.

8 Q. And some of the podcasts that were produced in
9 London, England, have now been moved to New York City?

10 A. I believe whatever was done in London is not done
11 anymore.

12 Q. I guess would any relevant documents have been
13 moved from Washington State or Washington, DC, to
14 New York City?

15 A. Yes, at some stage they would have.

16 MR. PITCOCK: Nothing further at this time,
17 your Honor.

18 THE COURT: All right.

19 REDIRECT EXAMINATION OF EDWARD J. "TED" MCCONVILLE
20 BY MR. LIEBERMAN:

21 Q. Mr. McConville, the documents that were moved from
22 Washington State to New York City, were they moved so
23 that NBC could argue there were fewer documents in
24 Washington than there were in New York for the purpose of
25 this transfer motion?

1 MR. PITCOCK: Objection --

2 A. No.

3 MR. PITCOCK: -- lacks foundation.

4 THE COURT: Could you ask him how he knows?

5 MR. LIEBERMAN: Sure.

6 BY MR. LIEBERMAN:

7 Q. Why were the documents moved?

8 A. The documents were moved as part of NBC winding
9 down the production side in Redmond, Washington, and
10 moving it all to New York.

11 Q. And were you one of the people who made decisions
12 regarding moving the documents?

13 A. The documents that pertained to what I did, yes.

14 Q. And was one of your reasons for moving the
15 documents to make a transfer motion to New York more
16 attractive than it had been before?

17 A. No, it wasn't.

18 Q. Thank you. Now, Mr. Pitcock berated you on
19 cross-examination about the word "extensive." Do you
20 recall that?

21 A. I do.

22 THE COURT: I must say, for anyone reviewing
23 the record, that was the most gentle berating I have
24 heard, if in fact that's what it was. But anyway, go
25 ahead.

1 BY MR. LIEBERMAN:

2 Q. Let me rephrase my question.

3 Mr. Pitcock gently berated you with respect to
4 the use of the "extensive." On your direct testimony do
5 you recall you talked about having traveled to New York
6 about three or four times a year, I think?

7 A. That's correct.

8 Q. If you could look at paragraph 7 of your
9 declaration.

10 MR. LIEBERMAN: Your Honor, may I approach the
11 witness and give him a copy of his declaration?

12 THE COURT: Certainly.

13 BY MR. LIEBERMAN:

14 Q. If you could look, please, at paragraph 7, the
15 same sentence that has the word "extensive" in it -- or
16 "extensively" in it. In a portion of the sentence that
17 Mr. Pitcock didn't read to you, did you say anything
18 about how many times you had traveled to New York in
19 2013?

20 A. I'm sorry. Could you ask that again?

21 Q. Did you say anything in that sentence with the
22 word "extensively" about how many times you had traveled
23 to New York that year?

24 A. I'm sorry. I'm not following you.

25 Q. Look at paragraph 7 of your declaration.

1 A. Right.

2 Q. The third line down.

3 A. Yes.

4 Q. In the same sentence with the word "extensively,"
5 do you say how many times you had traveled to New York
6 that year?

7 A. Yes.

8 Q. How many times did you say you had traveled to
9 New York that year?

10 A. Three times.

11 Q. And was that the same number that you testified to
12 on direct examination?

13 A. Yes.

14 Q. By the way, when you travel to New York on
15 business, how long would you typically stay each time?

16 A. Generally two weeks.

17 Q. Now, Mr. Pitcock asked you questions about certain
18 Akamai and Limelight servers and are they all over the
19 place. Do you remember that?

20 A. Yes.

21 Q. Just to be clear, the servers we're talking about
22 are not NBC servers. They belong to either Akamai or
23 Limelight or some other content management provider,
24 correct?

25 A. That is correct.

1 Q. And these Akamai and Limelight servers, they would
2 also be used by -- could you estimate what percentage of
3 Fortune 100 companies in the United States?

4 MR. PITCOCK: Objection to form. Lacks
5 foundation.

6 THE COURT: Well, I'll allow him to answer the
7 question if he can.

8 A. I'm sorry. I don't know. A lot. I know that.

9 BY MR. LIEBERMAN:

10 Q. Akamai and Limelight servers are regularly used to
11 disseminate content by most large media companies?

12 A. Yes.

13 Q. Mr. Pitcock asked you certain questions
14 regarding...

15 MR. LIEBERMAN: I have no further questions,
16 your Honor.

17 THE COURT: Okay.

18 MR. PITCOCK: I just have a couple, your
19 Honor, within the scope of his redirect.

20 THE COURT: If they deal with new matter on
21 redirect, you may ask.

22 RECROSS-EXAMINATION OF EDWARD J. "TED" MCCONVILLE

23 BY MR. PITCOCK:

24 Q. The sentence in your declaration, if you look at
25 paragraph 7, it says actually "Since the beginning of

1 this year I have travelled to New York City for business
2 on three separate occasions." Do you see that?

3 A. Yes.

4 Q. And that was signed on the 27th day of June, 2013?

5 A. Correct.

6 Q. And, so, that was approximately half the year; is
7 that correct?

8 A. Yes.

9 Q. And you don't think you were implying that you'd
10 visit New York City more than three times over the course
11 of the calendar year?

12 A. Of this year?

13 Q. Yes.

14 A. Probably not because of the fact that we were
15 building our new facility in Seattle.

16 Q. And Mr. Lieberman said you stayed for two weeks at
17 a time when you visited New York City?

18 A. On this particular occasion probably one week, but
19 typically, in the past, two weeks.

20 MR. PITCOCK: Nothing further.

21 THE COURT: All right. Thank you,
22 Mr. McConville. You may step down, and you're free to
23 go.

24 THE WITNESS: Thank you, your Honor.

25 MR. LIEBERMAN: NBC has no further witnesses,

1 your Honor.

2 THE COURT: All right. Thank you,
3 Mr. Lieberman.

4 MR. WARD: Your Honor, we don't have any
5 further witnesses. There are a couple of facts that we'd
6 like the court to take judicial notice of.

7 THE COURT: Well, I tell you what. Why don't
8 I let Mr. Lieberman make his remarks, and I'll let you
9 point those out after he does. And you can respond.

10 MR. WARD: Perfect.

11 MR. LIEBERMAN: Thank you, your Honor.

12 Your Honor, an appropriate touchstone for the
13 analysis in this case I would suggest is precisely what
14 this court did about a year ago in the *Scott Clare versus*
15 *Chrysler Group* case. In that case the court transferred
16 the case to the Eastern District of Michigan. The first
17 thing the court did in its analysis was hold, we believe
18 correctly, that -- and this is quoting the court's
19 language at page 146 of the hearing transcript -- "the
20 facts are to be viewed as of the time of filing of the
21 lawsuit," citing the recent *EMC* case from the Federal
22 Circuit.

23 And here the temporal issue is of particular
24 significance with respect to Personal Audio's contacts
25 and contacts in Texas. It's I think less significant

1 with respect to NBC and CBS, although, you know, there
2 may be some significance there.

3 It's undisputed, based on Mr. Liddle's
4 admissions, that at the time of the filing of the lawsuit
5 Personal Audio had no office of any kind in the Eastern
6 District of Texas. It only had a mailbox. And I won't
7 go any further into the way Personal Audio represented
8 that it -- what it said about that mailbox. Mr. Liddle
9 has admitted that its phone number was not answered in
10 the Eastern District of Texas before the filing of the
11 lawsuit -- in fact, it was not answered in the Eastern
12 District of Texas anytime before the transfer motion --
13 that it rolled over to Mr. Baker in Massachusetts.

14 There was one employee that Personal Audio had
15 in the Eastern District of Texas, and that was Mr. Liddle
16 who was hired 12 days before the time the lawsuit was
17 filed. And I think it can be reasonably concluded that
18 at the time Mr. Liddle was hired, Personal Audio
19 anticipated a new round of litigation with additional
20 entities. Indeed it had just filed litigation against
21 entities other than NBC and CBS.

22 Let's look at the way Personal Audio is
23 organized. The general counsel and now the CEO of
24 Personal Audio was someone who was a second-year
25 associate at a law firm in Houston with no training that

1 would have given him expertise to be general counsel of a
2 company or the CEO of the company, but in fact he doesn't
3 appear to make the decisions. Before the lawsuit was
4 filed, he spoke with Mr. Baker about whether to file the
5 lawsuit. Mr. Baker is in Massachusetts. And he reports
6 every few weeks to Mr. Logan who is in New Hampshire.
7 The company is run out of New Hampshire or run out of
8 Massachusetts. It is not run out of Texas.

9 The original documents which Personal Audio
10 has referred to in this case, the evidence today revealed
11 that those documents were moved into the Eastern District
12 of Texas from the Robins Kaplan offices in Minneapolis,
13 Minnesota, by litigation counsel or at the request of
14 litigation counsel two days before Personal Audio sued
15 Apple. That is precisely the sort of activity that the
16 Federal Circuit says should be disregarded. And here I
17 would cite both the *Zimmer* and the *Hoffmann-LaRoche*
18 cases.

19 There's also a patina here of what looks to me
20 to be an effort to create a misleading record with regard
21 to Personal Audio's contacts with the Eastern District of
22 Texas, and that's found in three things. It's found in
23 the representation to this court -- and by the way, to
24 other courts as well -- that Personal Audio's principal
25 place of business was Suite 180 at that 3827 Phelan

1 Boulevard address when it was -- there was no suite,
2 there was no room. There were no activities going on
3 there. It was a mailbox. And the language was used in
4 the declaration and in other litigation documents filed
5 by Personal Audio leaving the impression that this was an
6 active office. For example, the language in the Rule
7 3-2(b) disclosure or 3-2(c) disclosures which said that
8 the prosecution history documents could be examined at
9 the Personal Audio facility at Suite 180 and it obviously
10 could not.

11 There was also in the declaration a reference
12 to the phone number with the Beaumont area code. The
13 clear intent of that language was to suggest to the court
14 that the phones were being answered in Beaumont, there
15 were people working on this in Beaumont. They weren't.

16 At the time of this lawsuit, Personal Audio
17 had nobody in the Eastern District of Texas. They had
18 nobody in Texas. They had no office in the Eastern
19 District of Texas, and the only employee they had had
20 been hired 12 days before. These are just the types of
21 reasons that the federal -- that the Federal Circuit has
22 said are entitled to no weight. Again, the *Zimmer* case,
23 *Hoffmann-LaRoche*, and the *Microsoft* case.

24 Looking at the other side of the equation, the
25 NBC and the CBS context, I would start with the language

1 that this court used in the *Scott Clare* case at page 147
2 of the transcript. Open quote, I start from the
3 presumption that's been set out by the Federal Circuit
4 that the headquarters or base of the alleged infringing
5 party will be the source of most of the proof, end quote.
6 And that's what the evidence here has shown.

7 Let me start with the NBC evidence. NBC has
8 presented testimony from three witnesses who explained
9 their degree of knowledge, why they were knowledgeable,
10 who was on their team. Virtually all of the people at
11 NBC with knowledge regarding the podcasts and the
12 episodes that were accused of infringement are
13 headquartered in New York. They work out of New York or
14 out of Englewood Cliffs, New Jersey, which is 10, 15
15 minutes away. There are some technical aspects in the
16 State of Washington; but when you're dealing with a
17 company that has 30,000 employees, it would be surprising
18 if you didn't have some employees who were located in
19 other parts of the country. And if there were a general
20 rule that if you have employees located in different
21 parts of the country, that defeats a motion for transfer.
22 No motion for transfer would ever be granted. That, I
23 submit, is not the law.

24 With respect to CBS, for CBS Showtime which
25 constitutes, I believe, just over half of the shows that

1 have been accused by Personal Audio, Seana Baruth's
2 testimony went in completely un rebutted that literally
3 everybody with knowledge of the relevant technology was
4 located in New York.

5 With respect to CBS Radio, the testimony was
6 that most of the key witnesses and the third-party
7 entities that provide technology are in New York and
8 New Jersey. For cbs.com the testimony is a little less
9 unilateral. There's considerable technological --
10 presence of technological witnesses in the northern part
11 of California, although there was testimony that there
12 are a significant number of technological witnesses in
13 New York as well. The testimony is that all the
14 business, the metrics, all of that is done in New York
15 for cbs.com.

16 For the sports podcasts, we have a
17 concentration of witnesses in a number of different
18 places but including Florida. I would point out to the
19 court that when you're talking about how much of the case
20 really is podcasts, the revenue from the podcasts in this
21 case are going to be a minuscule portion of the total
22 accused revenue in this case. You're talking about low,
23 single-digit percentage. So, that's going to be a very,
24 very small part of the case. And Florida is not Texas.

25 What we have is a stunning, striking,

1 startling absence of any witness with material knowledge
2 in the State of Texas much less the Eastern District of
3 Texas. The best Personal Audio has been able to come up
4 with is 1 of 38 members of Mr. O'Keefe's team, an
5 administrative person whose responsibility principally
6 consists of scheduling meetings and taking notes.

7 We have here the identification of -- for
8 CBS -- identification for CBS of important third-party
9 witnesses Synergy and Harris who are located in New York
10 and New Jersey. That's something that this court has
11 held is quite important. We also have, as this court
12 pointed out in the *Scott Clare* case, a nonparty witness
13 who neither side can compel to testify, an inventor of
14 this patent who your Honor can attribute whatever weight
15 your Honor wishes to the testimony as to -- I'm sorry.
16 Let me take a step back.

17 Mr. Goessling, one of the inventors, is in the
18 State of Massachusetts. Mr. Goessling was characterized
19 by Apple as having testified in the *Apple* case that he
20 believed that the patent was invalid. Mr. Goessling is
21 obviously somebody that we were very interested in, and
22 we'd like to have Mr. Goessling testify at trial. He
23 apparently has no connection to Personal Audio. It is
24 certainly going to be a lot easier to get Mr. Goessling
25 to testify in New York if he lives in Massachusetts than

1 it will be to get him down to Texas to testify. And he
2 can be a very important witness for NBC and CBS.

3 In terms of the convenience and the cost of
4 attendance for willing witnesses, which this court has
5 said is important in the *Scott Clare* case and the Federal
6 Circuit said it's important, for NBC virtually all of the
7 relevant witnesses are in New York and New Jersey. Maybe
8 there were a few in Washington State. There's nobody in
9 Texas or near Texas. For CBS, again you've got New York
10 and New Jersey. You've got some in California. You've
11 got some in Florida. You've got none in Texas.

12 Plaintiff's own witness in their 26(a)(1)
13 disclosures -- they listed four witnesses. Two of them
14 are in New England, Mr. Logan in New Hampshire,
15 Mr. Baker -- Mr. Logan in New Hampshire, Mr. Call in
16 North Carolina. Mr. Baker is the vice-president of
17 licensing who is the senior to Mr. Liddle in terms of
18 experience; he's in Massachusetts. Personal Audio's own
19 witnesses, except Mr. Liddle, would have to travel
20 extensively for the case to proceed in Texas. And the
21 fact that they consent or may consent to testifying in
22 Texas is entitled to no significance. If a plaintiff
23 could simply say, "My witnesses all consent to come and
24 testify in Texas," nobody would ever get a case
25 transferred. That's not the law.

1 Will Mr. Brad Liddle be a key witness at the
2 trial of this action? I don't think that anybody
3 believes that Mr. Liddle is going to be a key witness in
4 this case. I know your Honor has tried scores and scores
5 of patent cases; and I suspect that your Honor has seen
6 very, very short testimony, if any testimony, from the
7 person in charge of licensing for the patentee.

8 Issues of judicial efficiency. First, the
9 Federal Circuit and the *Vistaprint* and the *Verizon*
10 *Holdings* cases and Judge Love in the *Auto-Dimensions* case
11 has made very clear that just because there are other
12 cases that are pending in a particular district does not
13 mean that the judicial convenience factors trump the
14 other factors under 1404. And here not only do you have
15 a transfer motion by NBC and a transfer motion by CBS,
16 you have a transfer motion by HowStuffWorks. You have a
17 lawsuit filed by FOX. It's the first filed action in the
18 District of Massachusetts, and the court in Massachusetts
19 is going to be deciding on March 4th whether that action
20 should be the one to proceed rather than the infringement
21 suit of the Personal Audio filed -- the second filed
22 action that they have filed here in Texas. So, the --
23 even the judicial efficiency arguments, it's not at all
24 clear that they weigh in favor of Personal Audio.

25 The test here, the burden we have to meet, is

1 it substantially more convenient for this case to proceed
2 in New York. I would suggest --

3 THE COURT: I think it's actually "clearly
4 more convenient," is it not?

5 MR. LIEBERMAN: I defer to your Honor.

6 THE COURT: I hear it a lot but --

7 MR. LIEBERMAN: Okay.

8 THE COURT: Go ahead.

9 MR. LIEBERMAN: The test is it clearly more
10 convenient than -- I feel very comfortable, your Honor,
11 as the evidence went in today; and we ask that the court
12 consider that evidence and as expeditiously as it can
13 grant the motion to transfer both the NBC and CBS cases
14 to the Southern District of New York.

15 Thank you, your Honor.

16 THE COURT: All right. Thank you,
17 Mr. Lieberman.

18 MR. WARD: Your Honor, Johnny Ward for
19 Personal Audio. If I could, I'll just respond to some of
20 Mr. Lieberman's remarks and in the course of that
21 response ask the court to take judicial notice of the
22 facts that we want to bring to the court's attention, if
23 that's okay.

24 THE COURT: All right.

25 MR. WARD: As the court is well aware, the

1 standard is it's clearly more convenient for the
2 defendants to have this case tried in New York versus the
3 Eastern District of Texas. That is the test. There's no
4 dispute that venue is proper here in the Eastern District
5 of Texas. That argument has not been made by either
6 defendant.

7 There's no dispute that Personal Audio, LLC,
8 is a legitimate company formed under the laws of the
9 State of Texas, formed by the inventors of the
10 patents-in-suit for the purpose of monetizing its
11 intellectual property. Personal Audio has been
12 litigating in this district since 2009 with the original
13 case filed, albeit on different patents, in Beaumont.
14 That case was tried to verdict where its patent was held
15 valid and infringed. It was resolved while on appeal.
16 Personal Audio is a growing company. There's no dispute
17 about that. As much as the defendants dislike that fact,
18 it is a fact.

19 You heard from its general counsel, Mr. Brad
20 Liddle. It's undisputed that they are paying him a
21 substantial salary, that his job functions are real, that
22 he is involved in the day-to-day management of litigation
23 and licensing of the patent involved in this lawsuit. I
24 know some folks are very opposed to that business model,
25 but it's not been outlawed. It is Personal Audio's

1 business model, and it doesn't make any apologies for it.
2 As long as companies are going to use Personal Audio's
3 property without its permission, it intends to pursue
4 those infringers via this company to have those companies
5 honor its intellectual property.

6 There's no dispute that Personal Audio has
7 millions of dollars in its bank account in Beaumont. It
8 now has offices in Beaumont and Plano. Mr. Liddle
9 resides in the Eastern District of Texas.

10 Now, interestingly, your Honor knows that this
11 case will involve issues of invalidity and numerous prior
12 art references. At least according to the defendants'
13 disclosures, they intend to pursue those defenses; yet,
14 they didn't identify a single witness who would be --
15 that it would be more convenient to try this case in the
16 Southern District of New York than the Eastern District
17 of Texas. And I think the reason they did that is
18 obvious. Had they had a witness, they certainly would
19 have brought it to the court's attention.

20 I do want to respond to Mr. Lieberman's
21 comments about Personal Audio creating a misleading
22 record. Mr. Liddle's declaration is of course part of
23 Personal Audio's response. It's clear that he says he's
24 the sole employee of Personal Audio with his office
25 located in Houston. I think that the reference to a

1 suite is not accurate. I think Mr. Liddle owned up to
2 that as being not accurate; and hindsight being 20/20, if
3 he had formed this company back when it was formed, that
4 wouldn't be the most accurate representation. There is a
5 suite in Beaumont. They were in the process of setting
6 up a suite. To the extent that becomes important, I'd
7 point out that the depositions taken of Mr. Skaggs were
8 taken in that suite in Beaumont.

9 I also would call the court's attention to the
10 defendants' stated reason for filing this motion to
11 transfer venue. In their briefing on page 5, they argue
12 to the court that "because these cases" -- this is the
13 first full sentence on the top of page 5 of their motion
14 to transfer venue -- "because these cases will involve
15 defenses based on the non-infringement of the '504
16 patent, trial of these cases are likely to involve
17 testimony from third-party and party witnesses located in
18 or near the Southern District of New York." So, the
19 focus of the motion was on non-infringement.

20 However, listening through the testimony about
21 source code and documents, there has been nothing to tie
22 the location of documents relating to source code or any
23 of these other documents or servers to their defense of
24 non-infringement. They talk about the location of
25 documents which are located on servers in New Jersey and

1 Seattle and California and Florida, but they have done
2 nothing to tell the court "This is why these documents
3 are relevant to our defense of non-infringement." I
4 think that's a burden that they have to explain, why the
5 documents and why the witnesses are relevant; and I think
6 they have wholly failed to do that.

7 I'll start with NBC and work back to CBS. NBC
8 proffered three witnesses, a Mr. Drake who supplied a
9 declaration who it turned out -- this fact was not
10 present in his declaration -- turned out he was a
11 resident of the state of Georgia. And I'd request that
12 the court take judicial notice that there are six nonstop
13 flights from Atlanta to Shreveport each day on Delta and
14 that the mileage from the Shreveport airport to the
15 Marshall courthouse is approximately 35 miles.

16 THE COURT: Well, I'll certainly take judicial
17 notice that there's regular air service between Atlanta
18 and Shreveport; and the distance between Shreveport and
19 Marshall is something that's easily determined. So, I
20 don't have a problem with those. As to whether it's six
21 or not, I'm --

22 MR. WARD: I just pulled it up on Delta's
23 Web site.

24 THE COURT: I understand that, but I won't go
25 that far with judicial notice.

1 MR. WARD: There have been some folks who
2 weren't aware that there was an interstate running
3 through Marshall. So, maybe you ought to take judicial
4 notice of the fact that I-20 runs through Marshall as
5 well.

6 Mr. McConville, another witness proffered by
7 NBC, has resided in Washington State. He has been
8 planning on moving to New York since he supplied his
9 declaration back last year; but as we stand here today,
10 he still is a resident of Washington State.

11 These are two of the three witnesses that NBC
12 has brought to you saying they're going to be
13 inconvenienced by a trial in the Eastern District of
14 Texas and that it would be more convenient for them to
15 try the case in New York.

16 And then, of course, Mr. O'Keefe who obviously
17 is a resident of New York; but again I'd point out that
18 the documents that he identifies and the witnesses he
19 identifies with respect to how those witnesses and
20 documents play into their defense of non-infringement,
21 there was no explanation of that provided by NBC or any
22 witness.

23 With respect to CBS, again three witnesses.
24 And I kind of put them in three buckets. You've got
25 Mr. Norlander who testified with respect to

1 CBSSports.com; Mr. Gervais who testified with respect to
2 cbs.com, the television shows that are hosted on the Web;
3 and then Ms. Baruth who testified with respect to
4 Showtime.

5 With respect to CBSSports.com, the court
6 learned through Mr. Norlander that it is headquartered in
7 Florida, that all the information that he gathered was
8 from an individual more knowledgeable than himself,
9 Mr. Aicker, A-I-C-K-E-R [sic], who is also identified
10 in the defendants' disclosure who also resides in
11 Florida.

12 Mr. Gervais testified about a Mr. Randell,
13 with respect to the television shows, who works for CBS
14 Interactive. He's more knowledgeable than Mr. Gervais.
15 He knew more about the Web sites. Admittedly --
16 Mr. Gervais admitted these facts freely. Mr. Randell
17 works in San Francisco which is also where CBS
18 Interactive is headquartered.

19 Ms. Baruth did testify about Showtime, and
20 the court can look at the infringement contentions that
21 are part of the record to determine what percentage of
22 the accused products are composed of Showtime
23 programming. She had no knowledge of the location
24 of witnesses or documents relating to CBS or
25 CBSSports.com.

1 Ultimately, it appears that a CBS and NBC
2 transfer will not make this case more convenient except
3 for maybe Mr. Lieberman who is located in Washington, DC.
4 He will be traveling to New York to defend his clients.
5 It will not result in judicial economy. You've got cases
6 now currently pending in the Eastern District of Texas.
7 If you grant this motion, then you have cases pending in
8 the Eastern District of Texas and there's a DJ action
9 pending in Massachusetts and then there are also cases
10 pending in New York and HowStuffWorks wants to move the
11 case to Georgia. So, you've got multiple venues if you
12 follow the defendants' argument that this is going to
13 somehow streamline the cases and promote judicial economy
14 by granting this motion to transfer these cases to the
15 Southern District of New York.

16 As the defendants freely admit there are
17 relevant witnesses located all over the country,
18 witnesses of the parties. We don't know about third
19 parties. There's been no evidence with respect to third
20 parties in the defense of invalidity.

21 As the court is well aware -- you've seen a
22 number of patent cases both in this courtroom and in
23 Judge Gilstrap's courtroom. They are typically battles
24 of the experts. Just as this venue hearing has resulted
25 in depositions being taken all over the country, that's

1 what happens in patent cases. Folks get deposed.
2 Experts testify; and there's typically one or two
3 corporate representatives and maybe a stray third party
4 that testifies with respect to invalidity. Which brings
5 me to Mr. Goessling.

6 The defendants certainly made no attempt to go
7 depose him to find out what testimony he might have with
8 respect to the patent at issue in this case. He
9 testified with respect to a different patent in the case
10 in Beaumont, and I think he's a red herring in the list
11 of folks that you ought to be considering for persons
12 with knowledge of relevant facts.

13 For those reasons we'd ask that the court deny
14 NBC and CBS's motions to transfer.

15 THE COURT: I appreciate your arguments, and
16 of course I know that there are far more extensive
17 arguments already made in the briefs. I will await any
18 response by the plaintiff to the brief memorandum that
19 has been filed by the defendants today, and I would
20 expect any response to be similarly briefed and focused
21 on the authorities cited.

22 MR. WARD: And there may be no response; and
23 if we determine that before noon on Wednesday, we'll
24 certainly notify the court of that fact as well.

25 THE COURT: All right. In that case I will

1 take the matter under advisement and issue a ruling as
2 soon as practical.

3

4 (Proceedings adjourned, 4:02 p.m.)

5

6

7 COURT REPORTER'S CERTIFICATION

8

9 I HEREBY CERTIFY THAT ON THIS DATE,
10 FEBRUARY 28, 2014, THE FOREGOING IS A CORRECT TRANSCRIPT
11 FROM THE RECORD OF PROCEEDINGS.

12

13

14

/s/

TONYA JACKSON, RPR-CRR

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